



Ontario  
Energy  
Board

Commission  
de l'énergie  
de l'Ontario

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## **DECISION AND ORDER**

**EB-2019-0161**

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

**Application for a Gas Marketer Licence**

**BY DELEGATION,**

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

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**August 8, 2019**

## DECISION AND ORDER

Ag Energy Co-operative Ltd. (Ag Energy) filed an application on June 4, 2019 with the Ontario Energy Board (OEB), under section 50 of the *Ontario Energy Board Act, 1998* (OEB Act) for a gas marketer 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 a natural gas marketer and electricity retailer. It provides energy services to agricultural producers and processors, including selling natural gas and electricity.

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 Code of Conduct for Gas Marketers (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 commodity 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 a gas marketer 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.

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

**IT IS ORDERED THAT:**

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

**DATED** at Toronto, August 8, 2019

**ONTARIO ENERGY BOARD**

*Original signed by*

Brian Hewson  
Vice President, Consumer Protection & Industry Performance



## **Gas Marketer Licence**

**GM-2019-0161**

**Ag Energy Co-operative Ltd.**

**Valid Until**

**August 7, 2024**

*Original signed by*

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**Brian Hewson**  
**Vice President, Consumer Protection & Industry Performance**  
**Ontario Energy Board**  
**Date of Issuance: August 8, 2019**

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**

### **1.1 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 Ag Energy Co-operative Ltd.;

“regulation” means a regulation made under the Act.

## **2 Interpretation**

2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the 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 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 and regulations under the Act except where the Licensee has been exempted from such compliance by regulation.

## **5 Obligation to Comply with Codes**

5.1 Except as otherwise provided in Schedule 2, 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.

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

5A.1 The Licensee shall include the following notice on its membership application 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 an 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 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:
- 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 2.1.1 of the Board's *Natural Gas Reporting and Record Keeping Requirements: Gas Marketer Licence 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 *Natural Gas Reporting and Record Keeping Requirements: Gas Marketer Licence 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 2.2.2 of the *Natural Gas Reporting and Record Keeping Requirements: Gas Marketer Licence Requirements*, a copy of all application forms received by prospective members of the Licensee that are low-volume consumers.

## **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 8, 2019 and expire on August 7, 2024. 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**

None

## **SCHEDULE 2 EXEMPTIONS FROM THE CODE OF CONDUCT FOR GAS MARKETERS**

1. The Licensee is exempt from the following provisions of Part B of the Code of Conduct for Gas Marketers 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), provided however that:
  - a. the Licensee shall not submit a request to a gas distributor for a change of gas supply for a consumer to the Licensee or supply gas 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 Code of Conduct for Gas Marketers, 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 3.5 (transfer requests where consumer enters into contract with another gas marketer);
- 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 Code of Conduct for Gas Marketers;
- 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 (gas marketer complaint and compliance information).

2. For greater certainty, where a term is defined in section 1.2 of the Code of Conduct for Gas Marketers 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 Code of Conduct for Gas Marketers 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.