



EB-2010-0407

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O.1998, c.15, Schedule B;

AND IN THE MATTER OF an application for
exemptions from the Code of Conduct for Gas
Marketers by The Corporation of the City of Kitchener
for its current Gas Marketer Licence.

By delegation, before: Jennifer Lea

DECISION AND ORDER

The Corporation of the City of Kitchener filed an application on December 30, 2010 with the Ontario Energy Board (the “Board”) for an amendment to its gas marketer licence GM-2009-0048. The applicant is applying for exemptions from Part B - Sections 1.1(a),(b) and (c); 2; 3; 4; 5; 6; 7.1; 7.2; 7.4 to 7.6; 10 and Part C of the Code of Conduct for Gas Marketers (the “Code”) (as restated on November 17, 2010).

The Corporation of the City of Kitchener (“the Corporation”) is a municipally owned gas distributor that provides a default (non-contract) supply service at cost to customers within its franchise area. The Corporation owns and operates a natural gas distribution system for which the rates are fixed by the City of Kitchener under the *Public Utilities Act*. The natural gas commodity pricing is unbundled and adjusted quarterly to reflect the costs of providing system gas.

In 1999, the Board granted the applicant exemptions from certain sections of the Code as it then was. The exemptions were considered appropriate based on the applicant's obligations as a system gas distributor and the fact that it did not market to or enter into contracts with its customers. In December 2004, the Code was amended by the Board and the Corporation's licence was subsequently amended in 2006 to reflect exemptions from the new Code.

On November 17, 2010 the Code of Conduct for Gas Marketers was restated to implement the provisions of the *Energy Consumer Protection Act, 2010* in relation to the activities of licensed gas marketers. In keeping with its past practices, the Corporation is seeking exemption from the relevant sections of the Code that are parallel to the exemptions granted by the Board in 2006 and from new sections of the Code that would otherwise conflict with the Corporation's role as a municipally owned distributor providing default natural gas supply.

I have proceeded without a hearing since no other parties are adversely affected in a material way by the outcome of the proceeding and the applicant has requested that the matter be disposed of without a hearing.

I find that it is in the public interest to continue to exempt the applicant from compliance with certain sections of the Code. The applicant is a gas distributor that supplies gas to its customers in accordance with conditions of service approved by the City of Kitchener. The Corporation does not enter into gas supply contracts with its customers, nor does it employ salespersons who are marketing natural gas on its behalf. The Corporation is appropriately exempt from sections of the Code that impose requirements related to activities that the Corporation does not undertake.

IT IS THEREFORE ORDERED THAT:

1. The Corporation of the City of Kitchener is exempt from Part B - Sections 1.1(a),(b) and (c); 2; 3; 4; 5; 6; 7.1; 7.2; 7.4 to 7.6; 10 and Part C of the Code of Conduct for Gas Marketers;
2. The exemptions are identified on Schedule 2 of the gas marketer licence GM-2009-0051 which is attached to this Decision and Order.

DATED at Toronto, March 14, 2011

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects



Gas Marketer Licence

GM-2009-0048

The Corporation of the City of Kitchener

Valid Until

May 14, 2014

Original signed by

Jennifer Lea
Counsel, Special Projects
Ontario Energy Board
Date of Issuance: May 15, 2009
Date of Amendment: March 14, 2011

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1 Definitions

In this Licence:

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

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

“**Licensee**” means The Corporation of the City of Kitchener;

“**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 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 May 15, 2009 and expire on May 14, 2014. 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

Kitchener Utilities

SCHEDULE 2

LIST OF EXEMPTIONS FROM THE CODE OF CONDUCT FOR GAS MARKETERS

1. Part B, Section 1.1(a);
2. Part B, Section 1.1(b);
3. Part B, Section 1.1(c);
4. Part B, Section 2;
5. Part B, Section 3;
6. Part B, Section 4;
7. Part B, Section 5;
8. Part B, Section 6;
9. Part B, Section 7.1;
10. Part B, Section 7.2;
11. Part B, Section 7.4;
12. Part B, Section 7.5;
13. Part B, Section 7.6;
14. Part B, Section 10; and
15. Part C.

SCHEDULE 3
LIST OF EXEMPTIONS FROM THE NATURAL GAS REPORTING AND RECORD KEEPING
REQUIREMENTS

The Licensee is exempt from the following:

1. Section 2.1.
2. Sections 2.2.2(a) through (f).
3. Section 2.2.3.
4. Section 2.2.4.