EB-2026-0022

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF Phase 3 of an appeal under section 7 of *Ontario Energy Board Act, 1998* of a Decision and Order of the Board in EB-2026-0022, regarding an application by Chosen Energy Limited for an electricity retailer licence.

NOTICE OF APPEAL

Chosen Energy Limited (Chosen Energy) appeals the April 23, 2026 Decision and Order (Decision) of the Ontario Energy Board (OEB) denying Chosen Energy's application for an electricity retailer licence. As the Decision was issued by an OEB employee under delegated authority (the Delegated Authority), this Appeal is made under section 7 of the *Ontario Energy Board Act, 1998* (OEB Act).

PROPOSED METHOD OF HEARING: Chosen Energy proposes that the Appeal be heard in writing. Chosen Energy requests that the full record of the licence application proceeding be included and made available to the Commissioner(s) hearing this Appeal.

THE APPEAL IS FOR:

1. Reversal of the Decision and granting of an electricity retailer licence to Chosen Energy.
2. Alternately, remittal of the Application to be re-heard by an OEB employee with delegated authority, with opportunity for Chosen Energy to answer the concerns raised in the Decision and requirement for the delegated authority to consider (if necessary) the appropriateness of a shorter licence term.
3. In the further alternative, a determination that Chosen Energy may re-apply for an electricity retailer licence.
4. Such further and other Orders as Chosen Energy may request and the OEB approves.

THE GROUNDS FOR THE APPEAL ARE:

Background

1. Chosen Energy previously applied to the OEB for an electricity retailer licence in file EB-2025-0198. That application was denied in a Decision and Order dated November 27, 2025, without prejudice to Chosen Energy re-applying.[1]

2. On January 20, 2026, Chosen Energy applied to the OEB under section 60 of OEB Act for an electricity retailer licence. In the updated application, Chosen Energy sought to address the items of concern previously raised by the OEB.

3. Following the filing of the licence application in January 2026, OEB staff contacted Chosen Energy on three occasions to seek clarifications or further information. The first request, made around February 13, 2026, related to Chosen Energy's source(s) of funds and was answered by email. The second request, made around April 9, 2026, related to whether Chosen Energy wished to proceed with licence applications for both electricity and gas retailing. This was answered in a phone conference with OEB staff, where Chosen Energy confirmed it is prioritizing the electricity retailer licence. The third request, made around April 17, 2026, sought confirmation (which was provided) that Chosen Energy plans to serve only commercial customers and not residential customers.

4. Through these communications, Chosen Energy's principal, Oluwafemi Oduye, assured OEB staff that he would provide any necessary and relevant information and documents to support the application.

The Decision

5. In the April 23, 2026 Decision[2], the Delegated Authority denied Chosen Energy's application for an electricity retailer licence, stating as follows:

> *While the OEB acknowledges that the Applicant has implemented certain changes following the denial of its previous electricity retailer licence application, the OEB maintains that all requirements of O. Reg. 90/99 have not been met. Furthermore, the OEB is not satisfied of the Applicant's technical capabilities and that it possesses the necessary qualifications and*

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[1] EB-2025-0198, Decision and Order, November 27, 2025
[2] EB-2026-0022 Decision and Order (Decision).

> *expertise to conduct the licensable activities in accordance with all legal and regulatory obligations.*[3]

6. The Decision includes very limited explanation supporting the licence denial.

7. Under the heading "Financial Position", the Decision sets out what information is required to be filed for an electricity retailer licence and then includes the following conclusory statement:

> *The OEB has reviewed the documents and information filed by the applicant in support of its financial position and finds that the information does not support a finding that the Applicant can reasonably be expected to be financially responsible in the conduct of its business.*[4]

8. Under the heading "Legal and Regulatory Obligations and Technical Capability", the Decision sets out information that the applicant is required to provide and then sets out four concerns:

   a. *… the applicant has not described their policies, or provided sufficient information regarding their processes and procedures, that are in place or will be put in place to ensure compliance with its legal and regulatory obligations when serving the requested licensable activities.*

   b. *… the OEB is not satisfied that the individuals listed possess the necessary regulatory compliance, quality assurance and complaint handling expertise to operate as an electricity retailer and conduct the requested licensable activities in accordance with all legal and regulatory requirements.*

   c. *… the individuals listed in support of regulatory compliance and technical matters have limited pertinent experience and do not provide assurance that the Applicant has the technical capability necessary to operate as a licensed electricity retailer.*

   d. *… Chosen Energy's financial position does not support the hiring or contracting individuals with such qualifications and experience to serve the projected volume of consumers.*

9. The portions of the Decision reproduced above are the only substantive findings justifying the denial of the licence application.

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[3] Decision, page 2.
[4] Decision, page 2.

The Statutory Test for an Electricity Retailer Licence

10. The requirements to be met for an electricity retailer licence are set out in Ontario Regulation 90/99 under the OEB Act.[5] The specific requirements are:

> *An applicant for the issuance or renewal of a licence that allows for the retailing of electricity or the marketing of gas to low-volume consumers must meet all of the following requirements:*
>
> *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 codes, orders or rules issued or made by the Board.*
>
> *5. If the applicant is an individual, the applicant is at least 18 years old.*

Chosen Energy meets the statutory test

11. Based on the plain wording of the applicable regulation, Chosen Energy meets all of the statutory requirements to be granted an electricity retailer licence.

12. The particular concern raised by the OEB appears to relate to whether Chosen Energy would be expected to be "financially responsible". There is no evidence to suggest that Chosen Energy will not be "financially responsible". The Decision does not point to any evidence indicating that standard will not be met. Instead, the Decision simply makes a conclusory statement in this regard.

13. The Delegated Authority's decision that Chosen Energy would not be "financially responsible" is an error as it fails to take account of the totality of the evidence presented by Chosen Energy. The evidence, including bank information, business plan information and pro forma financial statements establishes that Chosen Energy "*can reasonably be expected to be financially responsible in the conduct of business".*

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[5] *O. Reg 90/99*.

14. The Delegated Authority's determination that Chosen Energy does not meet the statutory requirement under O. Reg. 90/99 is not correct or reasonable and should be reversed. The Decision on this point is not grounded in the evidence (in fact it is contrary to the evidence). Moreover, the Decision fails to provide any transparent reasoning to support the strong conclusion that Chosen Energy is not expected to be financially responsible.

15. As this is a statutory appeal, the standard of review for failure to properly apply a statutory requirement is correctness.[6] Regardless, this part of the Decision is neither correct nor reasonable (applying the framework set out in *Vavilov*).[7]

Chosen Energy meets other OEB expectations

16. The OEB's application for an electricity retailer licence goes beyond what is required by the applicable regulation. No test or guidance is set out as to what is expected or required in relation to these additional items.

17. Chosen Energy provided responses, information and documents in relation to each of these additional items set out in the OEB application. Chosen Energy answered each of the follow-up information requests from OEB staff.

18. Taking the information provided into account, the Delegated Authority erred in finding that Chosen Energy fails to meet the requirements for an electricity retailer licence.

19. Chosen Energy has provided evidence about the "key individuals" who will support the business and about how policies will be developed to comply with all relevant OEB codes and requirements. Contrary to the Delegated Authority's very cursory comments, the persons who will undertake Chosen Energy's key business activities are experienced and knowledgeable.

20. The Delegated Authority's determination on these items is not correct or reasonable.

21. Chosen Energy therefore requests that the Decision be reversed and the electricity retailer licence be granted.

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[6] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para. 117.
[7] Discussion of the reasonableness standard in relation to a decision-maker's reasons is set out in the *Vavilov* decision - *Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65*, paras. 127 and 128.

The Delegated Authority unreasonably failed to consider granting a limited term licence

22. The Delegated Authority denied Chosen Energy's licence application without considering whether conditions could be imposed to protect the public interest.

23. The main rationale for the denial of a licence to Chosen Energy is concerns about whether it will be "financially responsible". The OEB has previously addressed this and similar concerns for potential licensees by opting to approve limited term licences rather than denying a licence altogether.

24. The OEB's reasoning for approving licence terms of less than five years is set out clearly in an electricity retailer licence application for Ontario Wholesale Energy LV, where the OEB found as follows:

> *After considering the applications, the OEB finds it to be in the public interest to issue a gas marketer Licence and electricity retailer licence to Ontario Wholesale Energy LV Inc. The licences will have a term of two years. This term will give the applicant an opportunity to establish itself as reliable market participant in the Ontario gas marketing and electricity retailing. The two years term will also allow the OEB to assess and review Ontario Wholesale Energy LV Inc.'s experience in the marketplace should it choose to file for renewal of its licences in two years.*[8]

25. There are at least five other instances where the OEB has opted to approve a licence for two years or less, rather than five years.[9] The reasoning in each case is similar – the applicant is given the opportunity to establish itself as a reliable market participant and the OEB has the opportunity to re-evaluate after two years (where the licence renewal is not guaranteed).

26. Nowhere in the Decision is it shown that the Delegated Authority considered this shorter term approval option. No explanation is provided as to why this option is not appropriate for Chosen Energy.

27. If the OEB is prepared to reverse the Decision but is not prepared to grant a full licence, then Chosen Energy submits that a two year initial licence would be appropriate, under the same rationale as set out above for Ontario Wholesale Energy LV.

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[8] EB-2018-0134 Decision and Order, page 2.

[9] See, for example, EB-2009-0189 Decision and Order; EB-2013-0076 Decision and Order; EB-2016-0338 Decision and Order; EB-2018-0317 Decision and Order; and EB-2019-0229 Decision and Order.

28. Alternately, if the OEB grants this Appeal and remits the Application to a delegated authority, then it would be appropriate to provide direction that one of the options to be considered is a shorter initial licence term.

Failure to provide adequate reasons

29. A decision maker is expected to provide meaningful reasons for decision.

30. In a recent Federal Court of Appeal case, important guidance was provided as to what is expected from administrative decision makers[10] in terms of their decisions.

31. The Federal Court of Appeal observed that "C*utting corners and conclusory statements, without more, are not how the Agency should roll*" and then continued with the following explanation for why adequate reasons are required:

> *… the underlying rationales for the Supreme Court's comments in Vavilov tell us much about how major administrative decision-makers, like the Agency, should conduct themselves.*
>
> *There are at least three rationales. First, adequate reasons, especially those that analyze text, context and purpose, require careful and rigorous work that often exposes faulty reasoning before the decision is released. Second, in high stakes determinations like this, adequate reasons tell the parties that their key arguments were taken on board and considered, something resting at the core of procedural fairness. Third, adequate reasons further the transparency, legitimacy and accountability of administrative decision-makers to the parties before them, other regulatees, reviewing courts, and the wider public—something needed more than ever in these days of widespread skepticism, cynicism, and mistrust of government.*[11]

32. The Federal Court of Appeal confirmed that where reasons do not reach the expected standard then the remedy is to allow the appeal and remit the matter to the decision-maker.[12]

33. In this case, Chosen Energy is denied the licence it requires to launch its business. That is a serious consequence, as the OEB will be aware. In that circumstance, the Delegated Authority is obliged to provide complete reasons that grapple with the evidence and explain

[10] In that case, the Canadian Transportation Agency.
[11] Canadian National Railway Company v. Canada (Transportation Agency), 2025 FCA 184, paras. 44-46.
[12] *Ibid*, paras. 2 and 50.

the specific reasons why the OEB is not prepared to grant the electricity retailer licence to Chosen Energy. That did not happen.

34. The Delegated Authority's main finding is that the evidence does not establish that Chosen Energy will be financially responsible in the conduct of its business. No explanation whatsoever is provided as to what particular concerns or evidence led the Delegated Authority to that determination.

35. Similarly, the Delegated Authority's finding that Chosen Energy has not adequately described its policies and procedures is devoid of detail. The OEB's own application form provides no guidance as to what should be included on this item and Chosen Energy provided full assurances as to its intended compliance with all OEB requirements.

36. The Delegated Authority's findings about Chosen Energy's "key individuals" are also lacking detail. No explanation is provided about any specific failings or gaps in terms of the OEB's expectations. This is particularly problematic given that the OEB provides no guidance or standards as to what standards or qualifications must be met for "key individuals" for a modest sized electricity retailer.

Lack of procedural fairness

37. In making decisions about licencing the OEB owes applicants a duty of procedural fairness. This is the case because the decision is administrative and affects the rights, privileges or interests of a person.

38. While the scope of the duty of procedural fairness varies with the context of the decision at issue, it is heightened where the consequences of the decision to the impacted party are important or significant.[13] For Chosen Energy, the consequences of denial of a licence are devastating. Without the licence, Chosen Energy cannot proceed with its business.

39. In this case, Chosen Energy was not afforded procedural fairness in terms of being able to understand and address any concerns that the OEB held in relation to the licence application.

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[13] See *Environmental Defence Canada Inc. v. Ontario Energy Board*, 2026 ONSC 1002, paras. 57-62 citing *Baker v. Canada (Minister of Citizenship and Immigration)* .

40. The OEB processes licence applications through a written hearing conducted by a delegated authority. OEB staff is involved in processing and evaluating the application.

41. Where, as was the case here, OEB staff engages with the applicant to ask clarifying questions and obtain more information, then it is a reasonable expectation that the applicant will have the opportunity to know and answer any fundamental concerns that would prevent the issuance of a licence.

42. That is not what happened here.

43. While OEB staff reached out three times to Chosen Energy and asked limited questions, none of these questions related to the items that later formed the basis for the Delegated Authority's denial of the licence. It is quite likely that had appropriate clarifying questions been asked, then Chosen Energy could have provided answers that would have supported a different determination.

44. That chance was not given to Chosen Energy.

45. This is a failure of procedural fairness.

46. The appropriate remedy is to remit the matter to the Delegated Authority, who can direct OEB staff to seek clarification and further evidence to determine whether the stated concerns from the Decision can be allayed.

Rules and Additional Grounds

47. Chosen Energy relies upon section 7 of the OEB Act and Rule 17 of the OEB's *Rules of Practice and Procedure*.

48. In addition to the specific grounds set out above, the grounds for this Appeal also include such further grounds as Chosen Energy may advise and the OEB may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Appeal:

1. The EB-2026-0022 Decision and Order dated April 23, 2026;
2. The record of the EB-2026-0022 proceeding;
3. Any further submissions from Chosen Energy including to respond to any submissions from OEB staff; and
4. Such further and other materials as Chosen Energy may provide and the OEB may permit.

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