AIRD BERLIS

David Stevens
Direct: 416.865.7783
E-mail: dstevens@airdberlis.com

July 24, 2026

**BY EMAIL AND FILED VIA RESS**

Ritchie Murray
Registrar
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Dear Mr. Murray:

**Re: EB-2026-0162**
**Appeal under section 7 of the *Ontario Energy Board Act, 1998***

We are the lawyers representing Chosen Energy Limited in the above-noted matter.

Please see attached Reply Argument of Chosen Energy Limited, pursuant to Procedural Order No. 1 for this proceeding.

Please let us know if you require anything further or have any questions.

Yours truly,

AIRD & BERLIS LLP

David Stevens

cc. All Parties in EB-2026-0162

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EB-2026-0162

# ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15, Schedule B; and in particular section 7 thereof;

AND IN THE MATTER OF an Appeal by Chosen Energy Limited of the OEB Decision in EB-2026-0022.

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## CHOSEN ENERGY LIMITED

## REPLY ARGUMENT

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**AIRD & BERLIS LLP**
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON  M5J 2T9

David Stevens
Tel   (416) 863-1500

Email:  dstevens@airdberlis.com

Counsel to Chosen Energy

## A. INTRODUCTION

1. The reasons why this Appeal should succeed are set out in Chosen Energy's Notice of Appeal. Chosen Energy Limited (Chosen Energy) maintains its position that the OEB Delegated Authority Decision denying Chosen Energy's application for an electricity retailer licence was not correct or reasonable and should be reversed.

2. OEB Staff's Submission addresses items set out in the Notice of Appeal, but fails to establish that the Decision is correct or reasonable.

3. In this Reply Argument, Chosen Energy sets out its response to key items raised by OEB Staff.

## B. CHOSEN ENERGY MEETS THE NARROW STATUTORY REQUIREMENTS FOR AN ELECTRICITY RETAILER LICENCE

4. The five requirements for an electricity retailer licence are set out in Ontario Regulation 90/99 under the OEB Act.[1]

5. It is clear from the Decision that the Delegated Authority only took issue with the requirement that states "*Having regard to the financial position of the applicant, the applicant can reasonably be expected to be financially responsible in the conduct of business.*"

6. As set out in the Notice of Appeal, 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.

7. The Decision on this point is not grounded in the evidence (in fact it is contrary to the evidence). 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*".

8. OEB Staff defends the Decision on this point, arguing that "*Chosen Energy is a startup company with no history of revenue-generating business activities ..*".[2] OEB Staff further

[1] O. Reg. 90/99.
[2] OEB Staff Submission, page 8.

asserts that Chosen Energy "*did not provide supporting documentation to substantiate its projected financial position or demonstrate its ability to meet its financial obligations*".[3]

9. Neither of the justifications noted by OEB Staff are included in the Decision. The inadequacy of the reasons for decision are discussed below. In any case, though, these justifications should be dismissed.

10. The justification that Chosen Energy has no history of revenue-generating business is an unfair and unwarranted reason to deny licencing. Start-up companies exist in many fields. They may not have a record of activities, but that is not a proper reason to deny them an opportunity. The OEB's own objectives encourage innovation and economic growth.[4] Denying the opportunity to a new company to begin operations because of a lack of track record runs counter to those objectives.

11. Chosen Energy's lack of a history of revenue-generating activities should not be a barrier to licencing. Electricity retailing is a regulated activity, with detailed requirements aimed at ensuring consumer protection. Licencees have ongoing reporting and compliance obligations. The OEB has broad oversight powers, to allow quick action if actual (not speculative) concerns emerge. If the OEB is particularly concerned about a new entrant then it can, as detailed below, provide for a shorter term licence.

12. OEB Staff's allegation that Chosen Energy did not provide adequate supporting documents is simply wrong. Below is a screenshot of the applicable portion of the licence application, showing that Chosen Energy provided a pro forma financial statement from an expert

[3] OEB Staff Submission, page 8.
[4] *Ontario Energy Board Act, 1998*, section 1(1).

accounting firm, as well as a letter of reference from TD Bank.

> **12. (c) If the applicant does not submit financial statements for itself or its parent company, along with a parental guarantee, the applicant must attach to its application at least 2 of the following items:**
>
> - Most recent prospectus.
> - If the applicant is a new entity, proforma financial statements including Balance Sheet and Profit & Loss Statement for 2 years, along with notes or business plan explaining the assumptions used in preparing the proforma statements. Documents must be signed by at least 1 key individual.
> - Letter of reference from the applicant's bank showing the following information:
>   - Details respecting any line(s) of credit available to the applicant including dollar limit amount, outstanding amount as of current date, terms and conditions and whether the account is secured;
>   - Details respecting cash and cash equivalents (names of short-term investments, amounts and expiry dates if applicable; name of saving/chequing accounts, date accounts opened, account balances as of current date); and
>   - Details of any bank guarantee and/or letter of credit available to the applicant including amounts and the terms and conditions.
>
> **Please attach files.**
>
> ERLA00082-10-c-TD Bank Letter.pdf
> ERLA00082-10-c-Pro-forma Financial statement final.pdf
> ERLA00082-10-c- Prospectus Certificate and Articles of Incorporation - Chosen Energy Limited - Apr 29 2025.pdf

13. The pro forma financial statement is detailed and shows Chosen Energy's projected financial position (income statement, balance sheet and cashflow statement) as projected for 3 years.

14. The letter of reference from TD Bank includes all required information about cash and credit available, and confirms Chosen Energy's positive financial position.

15. While not a statutory requirement, the OEB's application form for an electricity retailer licence requires the identification of three "key individuals". The only guidance provided is that "*the key individuals … are responsible for executing the following functions for the applicant: matters related to regulatory requirements and conduct, financial matters and technical matters*."[5]

16. OEB Staff argues that the Delegated Authority was correct in finding that only one of the "key individuals" identified by Chosen Energy "*meets the description of 'key individual' identified in the application*".[6] Neither the Delegated Authority nor OEB Staff identify which of the proposed "key individuals" fail to meet the description from the licence application, nor the basis for that conclusion.

17. The information set out in Chosen Energy's licence application about the three key individuals establishes that each has experience in the energy industry, including with compliance, quality assurance and financial matters. Additionally, as explained in response to sections 12(d) and 13(a) of its Licence Application, Chosen Energy has the support and guidance of experienced

[5] OEB Electricity Marketing Licence Application, section 8.
[6] OEB Staff Submission, page 9.

expert consultants providing support for sales, pricing, strategy and portfolio management, and for finance and accounting matters.

## C. THE DELEGATED AUTHORITY'S REASONS FOR DECISION WERE INADEQUATE

18. The Delegated Authority's brief reasons for decision do not meet the expected and required standard, as detailed in the Notice of Appeal.[7]

19. OEB Staff do not address the recent guidance from the Federal Court of Appeal about what is expected from administrative decision makers in terms of their decisions.[8] OEB Staff instead default to the earlier general language from *Vavilov* that reasons must explain the basis for the decision and permit meaningful review of the outcome.[9]

20. Whether one looks at the reasons for decision through the lens of the general comments from *Vavilov*, or though the lens of the more detailed expectations set out by the Federal Court of Appeal, the reasons for decision from the Delegated Authority do meet the expected standard. With respect, neither the reasons for decision, nor the OEB Staff Submission, move beyond generalities in explaining and justifying the very consequential decision to deny an OEB licence to Chosen Energy.

21. The key finding justifying denial of the licence is that "[t]he 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."[10] No details whatsoever are provided. It is not accurate for OEB Staff to now state in argument that "[t]he 2026 Decision enabled Chosen Energy to understand why its application was denied and what deficiencies remained outstanding".[11]

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[7] Notice of Appeal, pages 7-8.
[8] *Canadian National Railway Company v. Canada (Transportation Agency)*, 2025 FCA 184, paras. 44-46.
[9] OEB Staff Submission, page 11.
[10] EB-2026-0022 Decision and Order, page 3.
[11] OEB Staff Submission, page 12.

22. Similarly, OEB Staff's contentions that the reasons for decision adequately describe the concerns with the identified key individuals and Chosen Energy policies and procedures is not supported by the Decision itself.

## D. OEB STAFF AND THE DELEGATED AUTHORITY DENIED CHOSEN ENERGY PROCEDURAL FAIRNESS

23. Where an OEB decision is made by a delegated authority, there is some blurring of the roles of OEB Staff because they are acting both as administrator and decision-maker. In that context, Chosen Energy submits that it is reasonable to expect procedural fairness from both the Delegated Authority and the assigned OEB Staff.

24. Chosen Energy did not receive procedural fairness. As set out in the Notice of Appeal, Chosen Energy's CEO (Oluwafemi Oduye) was in constant touch with OEB Staff and was eager to provide any missing information and allay any questions or concerns.[12] However, rather than specifically outlining concerns apparently held by OEB Staff and giving the applicant the opportunity to respond, the Application was instead directed to the Delegated Authority and denied.

25. It is simply not the case, as OEB Staff alleges[13], that Chosen Energy understood (and, implicitly, should have addressed) the concerns about its Application that were identified as the basis for licence denial in the Decision. Contrary to OEB Staff's contentions, Chosen Energy sought to completely address all concerns brought to its attention.
    a) The OEB's first decision[14] identified that Chosen Energy needed to have three key individuals. This was addressed in the Application, which included 3 key individuals.
    b) The OEB's first decision raised concerns with Chosen Energy's financial position. This was addressed in the Application with enhanced and improved information. For example, Chosen Energy showed a substantial increase in available funds, and the addition of supporting technical and financial consultants to enhance Chosen Energy's expertise. While the OEB apparently had continuing concerns on this topic, the specifics of those concerns were not shared with Chosen Energy and (as set out above) those specifics are not set out in the Decision.
    c) The OEB's first decision did not express concerns with Chosen Energy's policies. This was a new concern only raised in the Decision (and not raised by OEB Staff).

[12] Notice of Appeal, page 9.
[13] OEB Staff Submission, page 14.
[14] EB-2025-0198, Decision and Order, November 27, 2025.

26. Chosen Energy should have been granted the opportunity to answer OEB Staff's concerns in relation to the (second) Application. Failure to give this opportunity is not procedurally fair, and it is not in the public interest in denying new entrants the opportunity to contribute to the regulated energy space in Ontario.

## E. A SHORTER TERM LICENCE WOULD HAVE BEEN APPROPRIATE

27. Chosen Energy's Notice of Appeal sets out examples where a delegated authority has approved a shorter term electricity retailer licence to give an applicant the opportunity to establish itself as a reliable market participant.[15]

28. The Delegated Authority does not appear to have considered that option for Chosen Energy. That is an error.

29. OEB Staff states that the OEB is not bound by its previous licencing decisions, and each case its decided on its own record and merits.[16]

30. While the OEB is not strictly bound by its previous decisions, there is a reasonable expectation that regulatory decisions will be consistent and predictable. Market participants depend on that. As the Divisional Court stated in a very recent appeal related to an OEB decision: "*While previous decisions are not binding, it is not an error to consider past decisions and administrative decision makers must be concerned with the general consistency of administrative decisions*."[17]

31. OEB Staff further state that a shorter licence term would not have addressed the concerns raised by the Delegated Authority.[18] That submission fails to recognize or acknowledge that this is precisely what happened in prior cases where a shorter initial licence term was approved.
    a) In one such case, the delegated authority stated:

    *The standard term for a licence is five years. I am issuing this licence for a term of one year. The financial information provided as part of the application gave rise to concerns about the applicant's ability to finance the business. However, the applicant's business, according to the application, is focused on providing energy audits, alternative energy*

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[15] Notice of Appeal, page 6.
[16] OEB Staff Submission, page 10.
[17] *Environmental Defence Canada Inc. v. Ontario Energy Board*, 2026 ONSC 1002, para 69.
[18] OEB Staff Submission, page 10.

*solutions and demand management. One of the objectives of the Ontario Energy Board is the promotion of electricity conservation and demand management, and barriers to that market should be minimized where appropriate. As a new entrant to the market, the applicant can take the opportunity to improve its financial situation and bring evidence of that improvement in any licence renewal application it chooses to make at the end of the licence term.*[19]

b) In another case, the delegated authority stated:

*I find that despite the problems in its financial and compliance history, Onit should be granted both gas marketer and electricity retailer licences to allow the business owners to pursue their goals for the company. However, I further find that the concerns expressed by Board staff are justified, given the evidence on the record of these applications. Both the electricity retailer licence and the gas marketer licence will be renewed for a term of two years.*[20]

c) In a third case, the delegated authority stated:

*After considering the application and assessing the applicant's technical capability, financial viability and conduct, the OEB finds that it is in the public interest to grant the application and issue an electricity retailer licence to Planet Canada Inc., doing business as PC Ontario Energy for a period of two years. As a new entrant to the market, the applicant should use the next two years to demonstrate that it is a reliable participant in the electricity market.*[21]

## F. RELIEF REQUESTED

32. Chosen Energy respectfully requests that the OEB:

a) Reverse the Decision and grant an electricity retailer licence to Chosen Energy, for a full term or, as deemed appropriate, for a shorter term; or

b) Alternatively, remit 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; or

c) In the further alternative, direct that Chosen Energy may re-apply for an electricity retailer licence on a without prejudice basis.

All of which is respectfully submitted this 24rd day of July 2026.

David Stevens, Aird & Berlis LLP
Counsel to Chosen Energy

[19] EB-2009-0189 Decision and Order.
[20] EB-2013-0076 Decision and Order.
[21] EB-2019-0229 Decision and Order.