



EB-2010-0236
EB-2010-0237

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

AND IN THE MATTER OF an application under section 60 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B to renew Energhx Green Energy Corporation's electricity retailer licence.

AND IN THE MATTER OF an application under section 50 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B to renew Energhx Green Energy Corporation's gas marketer licence.

By delegation, before: Jennifer Lea

DECISION AND ORDER

Energhx Green Energy Corporation, carrying on business as Energhx Consulting ("Energhx") filed an application with the Ontario Energy Board, received on June 8, 2010, under section 60 of the *Ontario Energy Board Act, 1998* (the "Act") to renew its electricity retailer licence. Energhx also filed an application under section 50 of the Act to renew its gas marketer licence. The Board assigned the applications file numbers EB-2010-0236 and EB-2010-0237, respectively.

Energhx filed supplementary information and the applications were completed on August 17, 2010.

The Board issued a Notice of Application and Written Hearing on September 7, 2010. Only Board staff participated in the hearing. Board staff filed written interrogatories on October 8, 2010. Energhx filed responses to Board staff interrogatories on October 27,

2010. Board staff filed a submission on November 10, 2010 and Energhx filed its reply submission on November 25, 2010.

On January 28, 2011, following the enactment of The *Energy Consumer Protection Act, 2010* (“ECPA”) on January 1, 2011, the Board re-opened the record to provide Energhx with an opportunity to submit evidence of compliance with the current legislative and regulatory requirements. The terms of the licences were extended.

Starting in early 2011, the Board commenced a series of compliance inspections of those electricity retailers and gas marketers that filed a Certificate of Compliance with the Board. The inspection included Energhx. On August 25, 2011 the Board issued a Notice of Intention to Make an Order against Energhx for contraventions of various provisions of consumer protection legislation and Board Codes. In response to the Notice, in a letter dated September 9, 2011, Energhx requested an oral hearing. To accommodate the hearing process, the terms of the licences were further extended to April 30, 2012.

The hearing requested by Energhx was held on February 7, 2012. On March 26, 2012, the Board issued a decision and order in which Energhx was ordered to pay an administrative penalty in the amount of \$10,000.

Issues in the Applications

The Board originally issued an electricity retailer licence and gas marketer licence to Energhx on October 22, 2009. The standard term for such licences is five years. However, the licences granted to Energhx were for a one year term, due to concerns with respect to the financial viability. The decision of October 22, 2009 invited the applicant, in applying for renewal of the licence, to “improve its financial situation and bring evidence of that improvement”. In addition, the decision pointed out the necessity for licensees to familiarize themselves with Board Codes of Conduct that help protect consumers.

In these applications for renewal of the licences, key areas for consideration by the Board include the financial position, technical capability and the conduct of applicant. Board staff raised concerns with respect to the evidence filed in all three areas, and submitted that the Energhx applications for an electricity retailer licence and a gas marketer licence should be denied.

In its reply submission Energhx requested "... that the Board grant Energhx some leeway at this early stage of its business development by renewing its licences for another year. If the licences are not renewed, Energhx will be put out of business and will lose all of its investment to date".

Compliance Proceeding EB-2011-0311

The ECPA, in effect since January 1, 2011, is designed to protect energy consumers by ensuring that retailers and marketers follow fair business practices and that consumers are provided with essential information before they sign energy contracts. In the compliance proceeding, it was alleged that Energhx contravened sections of Ontario Regulation 90/99, Ontario Regulation 389/10, the ECPA and the Board's Codes of Conduct.

Although the Board found that Energhx had breached the legislation and the Codes, the Board also found that:

- By the time of the hearing, Energhx had brought itself into compliance with all issues;
- Energhx did not appear to derive any economic benefit from these contraventions and had very limited marketing and retailing activities that were undertaken beyond friends, family or company employees; and
- The potential of the contraventions to adversely affect consumers was not proven to be more than minor, given the evidence presented in the hearing.

The Board emphasized in the compliance decision that it expects Energhx to take whatever steps are necessary to ensure that it has a comprehensive and accurate understanding of all applicable legal and regulatory requirements and remains fully compliant with them if it intends to continue business operations as a retailer and/or marketer.

Board Findings

As noted above, Board staff submitted that these licence applications should be denied. However, since the time of that submission, the Board has found that Energhx has brought itself into compliance with legislative and regulatory requirements. I find that it is appropriate to grant the applications. However, the issues raised by staff with respect

to the financial performance of the applicant have not, in my view been fully answered, and the financial viability of the entity remains a concern.

I find that the licences will be granted for a two year term to enable Energhx to improve its financial position and demonstrate its continued compliance with legislative and regulatory requirements. I further find that the following reporting conditions should be imposed in the licence to allow the Board to monitor Energhx's financial progress and compliance with the licences.

Energhx will be required to file with the Board, no later than June 28, 2013, the following information:

1. Audited financial statements for the 2012 fiscal year;
2. A description of Energhx's compliance monitoring and quality assurance program, including a description of the specific protocols for testing the performance of all salespersons and verification representatives in relation to compliance with applicable statutes, regulations and regulatory requirements;
3. A summary of the results of the testing program conducted within the reporting period ending on April 30, 2013; and
4. A description of Energhx's strategy for any further improvement needed to achieve continuing legislative and regulatory compliance, demonstrating the link between the results of the program to date and measures to be implemented in the future.

IT IS THEREFORE ORDERED THAT:

1. The electricity retailer licence is granted for a period of two years.
2. In addition to the terms and conditions of the standard electricity retailer licence, the licensee shall abide by the special conditions contained in Schedule 2 to the licence.
3. The gas marketer licence is granted for a period of two years.

4. In addition to the terms and conditions of the standard gas marketer licence, the licensee shall abide by the special conditions contained in Schedule 2 to the licence.

DATED at Toronto, April 30, 2012

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects