



EB-2014-0018

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

AND IN THE MATTER OF an application by The
Corporation of the City of Kitchener - Utilities Division
for a gas marketer licence.

By delegation, before: Jennifer Lea

DECISION AND ORDER

April 16, 2014

The Corporation of the City of Kitchener - Utilities Division (“Kitchener”) filed an application on January 20, 2014 with the Ontario Energy Board under section 50 of the *Ontario Energy Board Act, 1998* (the “Act”) for a gas marketer licence renewal. As part of its licence renewal application, Kitchener requested that the Board grant the continuance of the current exemptions under the Code of Conduct for Gas Marketers (the “Code”) specifically Part B - sections 1.1(a),(b) and (c); 2; 3; 4; 5; 6; 7.1 to 7.6; 10 and Part C, and the Natural Gas Reporting and Record Keeping Requirements – Gas Marketer Licence Requirements (“RRRGM”) sections 2.1, 2.2.2(a) through (f), 2.2.3 and 2.2.4.

The Board issued a Notice of Application and Written Hearing on February 11, 2014. The Notice advised that the Board intended to proceed with this matter by way of a written hearing and that anyone wishing to participate must file a written submission with the Board and copy it to the applicant by March 4, 2014. The Notice also provided that if the applicant wished to respond to the submissions, such response must be filed with the Board and copied to any party that made submissions by March 11, 2014.

On February 28 and March 3, 2014, Planet Energy (Ontario) Corp. (“Planet”) and Summitt Energy Management Inc. (“Summitt”) filed submissions and on March 11, 2014 Kitchener filed its reply submission with the Board.

Submissions

In their submissions, Planet and Summitt raised concerns with the applicant’s trade name Kitchener Utilities and stated that, in their view, such name is in violation of the Affiliate Relationships Code for Gas Utilities which does not permit a utility to directly benefit from the use of its name while marketing to consumers. In addition, Planet and Summitt presumed that Kitchener will use its distribution staff, resources, equipment, materials, premises, etc. to operate under the gas marketer licence. Planet and Summitt argued that Kitchener would be in direct violation of the Affiliate Relationships Code for Gas Utilities, as Kitchener’s private enterprise will be funded from rate payer or tax payer revenues. Planet and Summitt also raised concerns that Kitchener will obtain a competitive advantage in the marketplace from sharing the confidential information and resources held by Kitchener as a gas distributor with its gas marketer business. Planet and Summitt also raised concerns about the consistency of Kitchener’s enrollment practices with the Board’s Gas Distribution Access Rule (“GDAR”).

In its reply submission, Kitchener stated that the submissions made by Planet and Summitt are misinformed, speculative and reflect a misunderstanding of Kitchener’s application. Kitchener has continuously held a gas marketer licence since 2000, and is currently renewing its gas marketer licence GM-2009-0048 issued in 2009. Kitchener explained that it is a municipally owned non-rate regulated gas distributor providing default system gas supply at cost to its ratepayers who do not choose competitive supply from gas marketers. Kitchener further stated that it derives no financial benefit from providing default system gas supply at cost to its ratepayers and that there are no cross-subsidies between default system supply and distribution service. With respect to Planet and Summitt’s concerns regarding compliance with the GDAR, Kitchener submitted that Planet and Summitt have provided no evidence of non-compliance, and Kitchener is not aware of any formal complaint made against it.

Board Findings

In gas marketer licence renewal applications, key areas for consideration by the Board include the financial position, technical capability and the conduct of the applicant. No

parties raised concerns with regard to financial and technical capabilities of the applicant to continue system gas distribution activities. With respect to conduct, I find that Planet and Summitt's submissions appear to be based on a misunderstanding of the purpose of Kitchener's renewal application.

Kitchener is a municipally owned non-rate regulated gas distributor that provides a default (non-contract) supply service at cost to customers within its franchise area. Kitchener owns and operates a natural gas distribution system where the rates are fixed by the City of Kitchener. The commodity pricing is unbundled and adjusted quarterly to reflect the costs of providing system gas.

Kitchener is required to hold a gas marketer licence to provide system supply gas to customers in its distribution service area due to legislative provisions that came into force as part of the passage of the Act in 1998. While Kitchener is exempt from rate regulation by the Board under section 36(8) of the Act, it is not exempt under section 48(3) from the requirement to hold a gas marketer licence. Kitchener needs the licence to continue to sell gas to its system supply customers.

Kitchener does not operate as a competitive gas marketer under the licence. Kitchener has emphasized that it will not "market" to its distribution customers, nor offer fixed price contracts in competition with other gas marketers. The concerns Planet and Summitt have raised regarding the use of the "Kitchener Utilities" name, cross-subsidization and sharing of information are not relevant to this application.

Planet and Summitt also raised questions about Kitchener's compliance with the GDAR. As I understand their submissions, the concern relates to Kitchener's behaviour as a distributor. While the Board would be concerned about any gas distributor acting so as to hamper consumer choice, those allegations are not related to Kitchener's conduct under its gas marketer licence.

Based on the evidence filed, I find that it is in the public interest to grant a gas marketer licence to Kitchener for a period of five years. I also find that it is appropriate and in the public interest to approve the applicant's request for certain exemptions from the Code and the RRRGM.

The applicant has acknowledged its obligation to comply with the Code and the RRRGM, and seeks a continuance of the exemptions previously granted to the

applicant. The applicant provides system supply gas to its customers in accordance with conditions of service which are approved by the City of Kitchener. As the applicant does not employ salespersons to market gas, not enter into gas supply contracts with its system supply customers, the applicant is appropriately exempt from sections of the Code and the RRRGM that govern those activities.

IT IS THEREFORE ORDERED THAT:

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

DATED at Toronto, April 16, 2014

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects