



**EB-2013-0318**

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

**AND IN THE MATTER OF** a Notice of Intention to Make an  
Order for Revocation of a Licence against Energhx Green  
Energy Corporation ("Energhx"), Licence Numbers ER-  
2010-0236 and GM-2010-0237.

**Before:** Christine Long  
Presiding Member

Paula Conboy  
Member

Cathy Spoel  
Member

## **DECISION AND ORDER**

**February 6, 2014**

On September 4, 2013, the Ontario Energy Board (the "Board"), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the "Act"), issued a Notice of Intention to make an Order under section 112.4 of the Act (the "Notice") for revocation of the electricity retailer and gas marketer licences of Energhx Green Energy Corporation ("Energhx"), ER-2010-0236 and GM-2010-0237, respectively.

The Notice alleged that Energhx had failed to comply with a provision of an Order of the Board (EB-2011-0311) and conditions of its electricity retailer and gas marketer licences, specifically the requirement to pay an administrative penalty and the condition to file certain information with the Board. Failure to comply with a provision of an Order of the Board and a condition of a licence is a breach of an enforceable provision as set out in section 3 of the Act.

A Supplementary Notice of Intention (the “Supplementary Notice”) was issued on October 4, 2013. The Supplementary Notice alleged that Energhx failed to pay the annual licence fees for its electricity retailer licence and for its gas marketer licence. As a condition of being licensed, licensees are required to pay all fees charged and amounts assessed by the Board.

On September 10, 2013, Energhx filed a letter with the Board requesting a hearing, as it was entitled to do under the Notice and the Act. The Board held an oral hearing on November 28, 2013 in which it considered the matters outlined in the Notice and the Supplementary Notice.

The complete record for this proceeding is available on the Board’s website. While the Board has considered the full record, the Board has summarized and referred to only those portions of the record that it considers helpful to provide context to its findings.

### **Board Findings**

The Notice arises from the Board’s Decision and Order issued March 26, 2012 (the “March 2012 Order”) in which the Board ordered Energhx to pay an administrative penalty of \$10,000.00 by December 31, 2012 (the “Penalty”). The Penalty resulted from a Notice of Intention to Make an Order against Energhx that was issued on August 25, 2011. The Board held an oral hearing on January 20, 2012 to hear the allegations against Energhx.

In the March 2012 Order, the Board determined that Energhx had committed a number of contraventions and ordered the Penalty. The Board ordered Energhx to pay the Penalty by December 31, 2012. On December 20, 2012, Energhx requested an extension and the Board approved an extension to June 28, 2013. On July 2, 2013,

Energhx requested an additional extension and the Board approved an extension to August 29, 2013. The Board indicated in its Decision issued July 18, 2013 that it would not grant any further extensions and ordered Energhx to pay the Penalty.

Energhx has been granted a number of extensions but has failed to comply with the March 2012 Order. As a result the Notice was issued.

Pursuant to section 112.4 of the Act, the Board is revoking Energhx's electricity retailer and gas marketer licences, ER-2010-0236 and GM-2010-0237, respectively.

### ***Suspension or revocation of licences***

**112.4 (1)** *If the Board is satisfied that a person who holds a licence under Part IV or V has contravened an enforceable provision, the Board may make an order suspending or revoking the licence. 2003, c. 3, s. 76.*

Section 3 of the Act provides that a provision of an Order of the Board is an enforceable provision.

### **Submissions made by Energhx**

An Order of the Board to pay an administrative penalty is not, as Energhx submitted, a more general order to all market participants who participated in a compliance audit undertaken by the Board in 2011.

Energhx has admitted that it is required to pay the Penalty 1.

Energhx has asked that the Board refrain from revoking its licences on the basis of its current financial position. The Board acknowledges Energhx's argument. However, the Board has granted a number of extensions to Energhx to allow it time to pay the Penalty. It is the Board's expectation that a licensee will be able to meet its financial obligations and as a result this argument is not persuasive.

Energhx also argues that voluntary non-use of its licences in effect exempts Energhx from the requirements of holding a licence. Energhx is wrong in its argument. Once licensed, a licensee is required to fulfill all the obligations required by the licence. A licensee is not at liberty to determine which obligations it considers applicable to its circumstances.

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1 Transcript from the hearing, November 28, 2013 ("**Transcript**"), at page 67, line 5.

Energhx also asked the Board to take into account that Energhx is doing work related to the smart grid. While the Board acknowledges the importance of smart grid technology, the Board will not suspend licence obligations for an entity on that basis.

### **The Supplementary Notice**

In a letter dated September 12, 2013, Energhx requested an exemption from payment of its licence fees. However, it became apparent at the hearing on November 28, 2013 that the Enforcement Team was unaware of this request and had proceeded on the understanding that Energhx had not responded to the Board's September 9, 2013 "Final Notice" letter. Energhx provided the Board with a copy of the letter following the oral hearing as it undertook to do. A correction to the evidence of the Enforcement Team was provided by a letter dated December 2, 2013. That letter confirmed that Energhx had responded to the Board's "Final Notice" letter and that Energhx had requested an exemption from its annual licensing fees.

The Board's decision to revoke Energhx's licences is not based on the non-payment of licence fees. It is unfortunate that Energhx's request was not dealt with prior to the hearing. However, the issue of non-payment of licence fees has not factored into the Board's decision. Revocation of the licences is based only on the failure to comply with a Board Order and pay the Penalty outlined in the Notice.

### **THE BOARD THEREFORE ORDERS THAT:**

1. Energhx's Electricity Retailer Licence ER-2010-0236 is immediately revoked.
2. Energhx's Gas Marketer's Licence GM-2010-0237 is immediately revoked.
3. Energhx file with the Board an affidavit proving that it has informed its existing customers that its electricity retailer and gas marketer licences have been revoked.
4. Energhx file certification of destruction or return to the Board its electricity retailer licence ER-2010-023 and gas marketer's licence GM-2010-0237.

**ISSUED** at Toronto, February 6, 2014

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary