



EB-2009-0257

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

AND IN THE MATTER OF an application pursuant to sections 52 and 74 of the *Ontario Energy Board Act, 1998* by Ontario Energy Savings L.P. to amend gas marketer licence GM-2005-0316 and electricity retailer licence ER-2005-0314.

By delegation, before: Theodore Antonopoulos

DECISION AND ORDER

Ontario Energy Savings L.P. (“OES” or the “applicant”) filed an application on July 2, 2009 with the Ontario Energy Board (the “Board”) pursuant to sections 52 and 74 of the *Ontario Energy Board Act, 1998* (“OEB Act”) to amend gas marketer licence GM-2005-0316 and electricity retailer licence ER-2005-0314 respectively, for the purposes of i) changing the applicant’s name on both licences and ii) adding a new trade name to both licences. The applicant’s current gas marketer and electricity retailer licences expire on July 14, 2010.

On August 4, 2009 the Board issued a Notice of Application and Written Hearing. Two submissions were received from one interested party. The applicant responded to each submission.

The full record is available at the Board’s offices. The Board has chosen to summarize the record to the extent necessary to provide context to its findings.

The Application

The current name on both the gas marketer and electricity retailer licences is “Ontario Energy Savings L.P.” The applicant requested that the name that appears on the licences be changed from “Ontario Energy Savings L.P.” to “Just Energy Ontario L.P.”

to reflect a re-branding across corporate entities which occurred during the months of June and July of 2009. The applicant stated that the purpose for the name change is to move beyond 'savings' to focus on managing energy costs and simplified customer energy solutions, clarify value propositions of fairness, integrity and simplicity and to reflect the consolidation of various acquired local brands into a single consistent and distinctive brand identity across all markets.

In its application, the applicant noted that as of July 21, 2009, all new customer contracts will include the Just Energy logo along with the following wording:

“Just Energy Ontario L.P. formerly known as Ontario Energy Savings L.P. (OES) operates under the Gas Marketer licence GM-2005-0316 and Electricity Retailer Licence ER-2005-0314 (collectively the “Licenses”) in the name of OES. OES has an application pending before the Board to change its name on the Licenses.”

The applicant stated that the Board may wish to consider adding a notation to the Board's webpage listing of market participants or to the Board presentation of retailer-customer issues statistics referring to the applicant's previous business identity.

The applicant also requested to add the trade name “Commerce Energy” to its current gas marketer and electricity retailer licences. The applicant updated its contact information by including four new key individuals to be assigned to the contact information for both licences. All other corporate information remains the same.

Two submissions were received on August 18 and September 16, 2009 from Solmon Rothbart Goodman LLP (“SRG”) representing a client in the process of preparing a complaint against the applicant. Reply submissions were received on August 24 and September 21, 2009 respectively from the applicant.

The first submission from SRG objected to the name change request on the grounds that the applicant was attempting to “bury its past” with respect to past convictions for fraud, complaints from consumers and fines levied by the Board. In its reply, OES denied that it has been convicted of fraud and noted that public records of the applicant's name change are available, that proper legal and regulatory requirements have been completed for the name change and that the applicant has sought to communicate and explain its rebranding to trade allies and the general public.

In its second submission, SRG submitted that in the event that the Board is predisposed to approve the name change request, OES should be required to include the phrase “Formerly carried on business as Ontario Energy Savings” whenever Just Energy Ontario L.P. or any abbreviation or short form thereof is referred to in its letterheads and communications of any form, including all contracts and agreements. The applicant replied that this condition is overbroad and would serve to increase the applicant’s costs without appreciably adding protection for Ontario consumers.

Board Findings

The Board grants the requested amendments to the applicant’s licences, with conditions set out further below.

Sections 52 (b) and 74 (b) of the OEB Act governing gas marketing and the regulation of electricity respectively, state that the Board may on the application of any person, amend a licence if it considers the amendment to be in the public interest, having regard to the objectives of the Board.

The Board expects that an applicant filing for a change to the name that appears on the licence or the addition of a trade name will provide the proper documentation describing and supporting the request, the reasons for the amendment and an explanation with regards to the impact it will have on its customers. The Board agrees with the submissions of the applicant that the subject application does not conflict with the public interest and notes that the applicant has filed the required information in support of both the name change request and the addition of the trade name, including demonstrating that it has met the general legal requirements for corporate and business name registrations in Ontario.

The Board has reviewed SRG’s request to deny the name change and the applicant’s reply and finds that the concerns raised by SRG do not warrant denial of the name change request. SRG has not demonstrated that it would not be in the public interest to grant the requested licence amendments pursuant to sections 52 (b) and 74 (b) of the OEB Act.

The Board notes that concerns raised with respect to an applicant’s past conduct would be considered more broadly in the context of a licence renewal application where an applicant

must demonstrate that its past conduct affords reasonable grounds for belief that the applicant will carry on business in accordance with law and with integrity and honesty¹.

The Board does not accept SRG's characterization of the applicant's motives for the name change. However, in the context of this proceeding, the Board finds merit in SRG's request for the applicant to continue to disclose its former name. The Board notes that the applicant is one of the largest gas marketers and electricity retailers in the province in terms of customer numbers, and has been operating under the OES name for a substantial period of time. The Board also notes that the applicant began identifying the name change to its customers in July 2009.

The Board finds that it is in the public interest to extend the transition period from the current name to the new name to align with the duration of the current licence terms. The applicant shall continue its practice (as amended by the Order below) of identifying the name change on its website and on all contracts of any new customers acquired as of the date of this Decision and for the duration of the current licence terms.

The Board will also require the applicant to identify the name of the licence holder (and its former name) on its Commerce Energy website, if available, and on all contracts of any new customers acquired under the Commerce Energy name as of the date of this Decision and for the duration of the current licence terms.

The Board will not require the applicant to identify its former name (or its licensed name for Commerce Energy related activities) on all other forms of communication.

IT IS THEREFORE ORDERED THAT:

1. The name on gas marketer licence GM-2005-0316 and electricity retailer licence ER-2005-0314 is amended to "Just Energy Ontario L.P (formerly Ontario Energy Savings L.P.)".
2. Gas marketer licence GM-2005-0316 and electricity retailer licence ER-2005-0314 are amended so as to add the trade name "Commerce Energy" on Schedule 1 of each licence.

The amended licences are attached to this Order.

¹ Ontario Regulation 90/99, Electricity Retailers – Licence Requirements

3. The applicant shall place the following statement prominently on the home page of the Just Energy website as of the date of this Decision and for the duration of the current term of the applicant's gas marketer and electricity retailer licences: "Just Energy Ontario L.P. was formerly known as Ontario Energy Savings L.P."
4. The applicant shall place the following statement prominently on the first page of all new Just Energy customer contracts entered into as of the date of this Decision and for the duration of the current term of the applicant's gas marketer and electricity retailer licences: "Just Energy Ontario L.P. was formerly known as Ontario Energy Savings L.P."
5. The applicant shall place the following statement prominently on the home page of the Commerce Energy website, if available as of the date of this Decision and for the duration of the current term of the applicant's gas marketer and electricity retailer licences: "Commerce Energy is a trade name of Just Energy Ontario L.P., licensed by the Ontario Energy Board and formerly known as Ontario Energy Savings L.P."
6. The applicant shall place the following statement prominently on the first page of all new Commerce Energy customer contracts entered into as of the date of this Decision and for the duration of the current term of the applicant's gas marketer and electricity retailer licences: "Commerce Energy is a trade name of Just Energy Ontario L.P., licensed by the Ontario Energy Board and formerly known as Ontario Energy Savings L.P."

DATED at Toronto, September 29, 2009

ONTARIO ENERGY BOARD

Original Signed By

Theodore Antonopoulos
Manager, Electricity Rate Applications