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BY E-MAIL

February 24, 2012

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Board Staff Submission
Electricity Retailer Licence Application EB-2011-0343
Gas Marketer Licence Application EB-2011-0299
Sunwave Gas & Power Inc.**

Please find enclosed Board Staff submission with respect to Sunwave Gas & Power Inc.'s applications for electricity retailer and gas marketer licences.

Please forward the submission along with this cover letter to the applicant in this proceeding.

Yours truly,

Original Signed By

Julie Doherty
Case Manager

Attachment



ONTARIO ENERGY BOARD

BOARD STAFF SUBMISSION

Sunwave Gas & Power Inc.

Gas Marketer Licence Application
EB-2011-0299

Electricity Retailer Licence Application
EB-2011-0343

February 24, 2012

BACKGROUND

Sunwave Gas & Power Inc. ("Sunwave") filed an application dated August 12, 2011, with the Ontario Energy Board under section 50 of the *Ontario Energy Board Act, 1998* (the "Act") for a gas marketer licence. Sunwave also filed an application under section 60 of the Act to for an electricity retailer licence on September 13, 2011. Supplementary information was provided and the applications were completed on December 15, 2011.

On January 13, 2012, the Board issued Notices of Application and Written Hearing which included interrogatories and submissions. Board staff filed interrogatories on the applications on February 3, 2012 and Sunwave responded to those interrogatories on February 8, 2012.

STAFF SUBMISSION

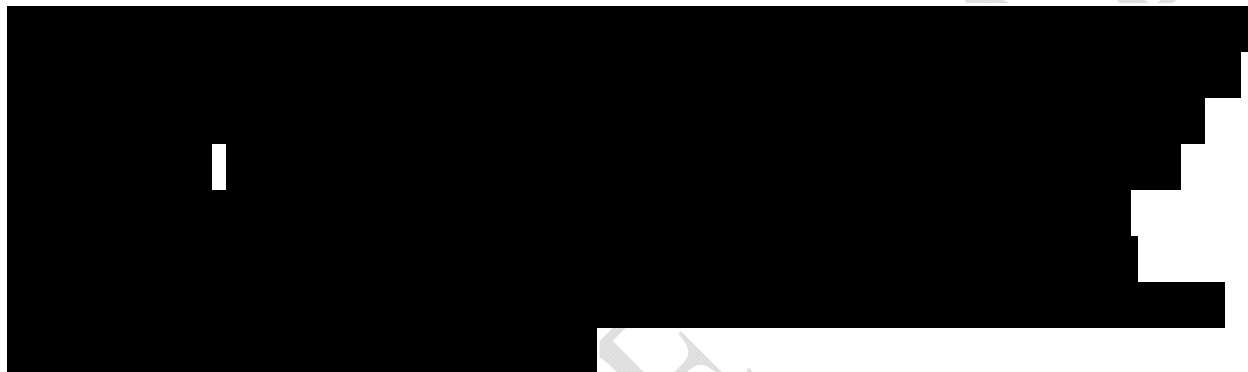
An important factor in the Board's review of a licence application, and in making a determination on issuing a licence, is past conduct of an applicant and its principals. If the Board has concerns it can put conditions on a licence and grant a licence for a term less than the usual five years. The Board has, in certain instances, done so in the past. Upon reviewing the evidence in this proceeding, staff has concerns and, accordingly, some recommendations with respect to the applications.

[REDACTED]

[REDACTED]



PAST HISTORY



1. EB-2009-0005 (Ontario) – related to false, misleading or deceptive statements to low volume consumers in relation to reaffirmation calls made by Universal representatives.
2. EB-2009-0118 (Ontario) – related to false, misleading or deceptive statements shown on a CBC Marketplace program. This related to three door to door agents.
3. BCUC G-47-08 (British Columbia) – related to an agent incident at the door.
4. Case No. U-15509 and U-15577 (Michigan) – related to the marketing practices of Universal and the switching of consumers, respectively.

¹ Mr. Silvestri's CV, page 2

SUNWAVE COMPLIANCE PLAN

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² Response to Board Staff Interrogatories, Q2, page 5

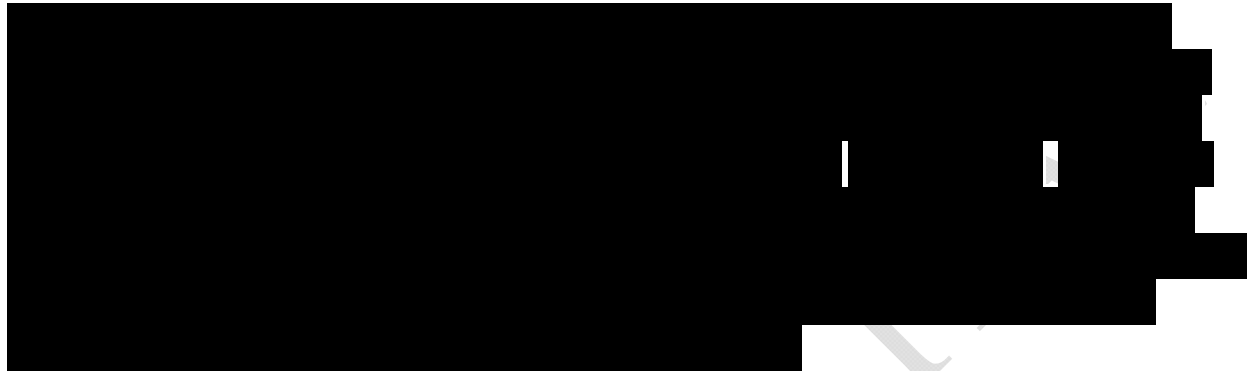
³ Response to Board Staff Interrogatories, Q2, page 5

⁴ Response to Board Staff Interrogatories, Q 2, page 5

⁵ Response to Board Staff Interrogatories, Q 2, page 5

⁶ Response to Board Staff Interrogatories, Q 2, page 5 and 6

⁷ Response to Board Staff Interrogatories, Q 2, page 5



PRIOR BOARD DECISIONS AND THE ENERGY CONSUMER PROTECTION ACT

In addition to the direct evidence in this case, Staff would like to reference the most recent application by Universal to renew its gas marketer licence. The licence was granted for a two year period rather than the usual 5 years. As the decision maker stated on page 3 of the decision:

Renewal of the Licence

I considered carefully whether the licence should be renewed for any term. As noted above, Universal was subject to two administrative penalties levied by this Board. The basis for the penalties was serious, as the allegations were that agents of Universal had made false, misleading or deceptive statements to energy consumers, and in one case, forged the signature of a consumer. Nor were the penalties in Ontario unique. Evidence elicited through interrogatories revealed that Universal or its associated entities had been subject to investigations and disciplinary actions for improper marketing behaviour in British Columbia, Michigan, New York State and Illinois.¹¹

Staff would like to point out that this decision was issued prior to the Ontario government's *Energy Consumer Protection Act, 2010* ("ECPA") being passed. That the

⁸ Response to Board Staff Interrogatories, Q3, page 6

⁹ Response to Board Staff Interrogatories, Q3, page 6

¹⁰ Response to Board Staff Interrogatories, Q4, page 6

government passed the ECPA reflects the government's intention to provide a greater degree of protection for low-volume consumers and staff submits that the Board should be cognizant of this in its decision making.

CONCLUSION

Section 2(1) of Ontario Regulation 90/99 made under the *Ontario Energy Board Act, 1998* requires that an applicant meet certain criteria before it can be issued a retailer or marketer licence. With respect to an applicant that is a corporation, as is the case here, the section specifically provides as follows;

2(1) An applicant for the issuance or renewal of a licence that allows for the retailing of electricity or the marketing of gas to low-volume consumers must meet all of the following requirements:

...3. If the applicant is a corporation, the past conduct of its officers and directors affords reasonable grounds for belief that its business will be carried on in accordance with law and with integrity and honesty.

As stated at the outset of this submission, staff has concerns with the applications due to past enforcement actions against Universal [REDACTED]

[REDACTED]

Based on the record as provided by the Applicant, and in an effort to ensure protection to consumers, staff recommends that the retailer and marketer licences, if granted, should be granted for a maximum of two years and [REDACTED]

[REDACTED]

All of which is respectfully submitted.

¹¹ Board Decision Universal Gas Marketer Application April 2010 - EB-2009-0364