

ONTARIO ENERGY BOARD

BOARD STAFF SUBMISSION

Sunwave Gas & Power Inc.
Application for a Gas Marketer Licence
EB-2011-0299
&
Application for an Electricity Retailer Licence
EB-2011-0343

May 18, 2012

Background

Sunwave Gas & Power Inc. filed an application on August 12, 2011 with the Ontario Energy Board under section 50 of the *Ontario Energy Board Act, 1998*, for a gas marketer licence. On September 13, 2011, Sunwave filed an application under section 60 of the Act for an electricity retailer licence. The Board assigned the applications file numbers EB-2011-0299 and EB-2011-0343 respectively.

Sunwave filed supplementary information. Sunwave completed the applications on December 15, 2011.

The Board issued a Notice of Application and Written Hearing for the two applications on January 13, 2012. Board staff filed interrogatories on February 3, 2012. Sunwave responded to the Board staff interrogatories on February 8, 2012.

Board staff filed a submission on February 24, 2012 and Sunwave responded to the submission on March 2, 2012.

In a letter dated March 19, 2012, Sunwave stated that two key individuals were no longer with Sunwave and requested that a Board decision on the applications be postponed until Sunwave updates its applications. Sunwave filed the revised applications with two new key individuals on April 16, 2012. Sunwave filed additional information and the Sunwave licence applications were completed on April 24, 2012.

On May 11, 2012, the Board issued Procedural Order No. 1 to make provision for a submission on the merits of the amended applications from Board staff and a reply submission from Sunwave.

Board Staff Submission

Section 2(1) of Ontario Regulation 90/99 made under the Act requires that an applicant meet certain criteria before it can be issued a retailer or marketer licence. The section provides, in part, 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 followings 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.

The applicant is a corporation. Accordingly, past conduct of the applicant and its key individuals is an important factor in the Board's review of a licence application and in making a determination on issuing a licence.

The evidence in the proceeding was reviewed and Board staff interrogatories were filed to further the record. Specifically, staff sought additional information with respect to the role of key individuals as it related to past enforcement actions, and Sunwave's plan to ensure compliance with its legal and regulatory obligations if it were licensed. Sunwave responded to the interrogatories.

Board staff's submission on the original applications was based on the record at that time. Therein, Board staff recommended that the licences, if granted, should be granted for no more than two years and that Sunwave should be limited to marketing to and enrolling consumers via online enrolment through the internet. Sunwave responded that neither it nor any of its key individuals have engaged in any conduct that warrants licence restrictions.

Subsequently, Sunwave made changes to its management team, including the departure of the key individuals that had been the subject of Board staff's questions related to past conduct. Sunwave emphasized that these changes were completely unrelated to and independent of any statements in the Board staff submission.

Sunwave amended the applications by replacing four key individuals identified in the original applications with two new key individuals. The four key individuals mentioned in the Board staff interrogatories and submission on the original applications are no longer with Sunwave. Staff has reviewed the key individuals named in Sunwave's amended applications and no issues have been identified.

The amended applications supersede the applications as originally filed. Accordingly, the recommendations made in the Board staff submission on the original applications dated February 24, 2012 are withdrawn. In the light of the amended applications, Board

staff is not recommending any conditions or restrictions if the retailer and marketer licences are granted.

All of which is respectfully submitted.