



**EB-2012-0448**

**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 Superior  
Plus L.P. in the name of Superior Energy  
Management for a Gas Marketer licence.

By delegation, before: Jennifer Lea

**DECISION AND ORDER**  
**APRIL 25, 2013**

**Background**

On January 11, 2013 Superior Plus L.P. ("Superior LP") filed an application for a gas marketer licence under section 50 of the *Ontario Energy Board Act, 1998* (the "Act"). The application was assigned Board file number EB-2012-0448.

As prescribed under section 48 of the Act, all entities carrying on business as a gas marketer in Ontario are required to hold a licence from the Board. Superior LP's gas marketer licence GM-2007-0621 expired on September 16, 2012. Superior LP continued to carry on business as a gas marketer in Ontario without a licence through the fall of 2012 until when, on November 26, 2012, it applied for and later, on December 13, 2012, received an interim gas marketer licence from the Board (GM-2012-0448). The Board's decision granting the interim licence provided, in part, that "[c]onsistent with the decision dated September 17, 2007 granting licence GM-2007-0621, this interim licence must be used for legacy contracts only and the applicant should not enter into new contracts under the authority of this interim licence".

In this proceeding, Superior LP is seeking renewal of its gas marketer licence. Superior LP wishes to continue to operate under the trade name Superior Energy Management.

A Superior LP affiliate, Superior Energy Management Gas LP (“SEM Gas LP”), also holds a gas marketer licence (GM-2012-0038) and also currently operates under the trade name Superior Energy Management.

### **The Proceeding**

The Board’s Notice of Application and Written Hearing for this proceeding was posted on January 28, 2013. On February 19, 2013 Board staff filed interrogatories on the application. Superior LP responded to those interrogatories on March 7, 2013. Board staff filed a submission on the application on March 22, 2013. Superior LP responded to Board staff’s submission on April 2, 2013.

In its submission Board staff focused on two areas of concern: Superior LP’s authority to enter into new low-volume contracts and the existence of two licences using the same name. Board staff noted that the decisions granting licence GM-2007-0621 and interim licence GM-2012-0448 state that the licences are granted with the understanding that no new contracts will be entered into under the authority of the licences. Board staff also noted that in its interrogatory responses, Superior LP acknowledged that it has entered into more than 17,000 new contracts under these licences. Board staff submitted that it had serious concerns with the discrepancy between what Superior LP is authorized to do (i.e. simply maintain its legacy low-volume gas contracts) and what it in fact continued to do (i.e. enter into new low-volume gas contracts with consumers).

Board staff also addressed the fact that while both Superior LP and its affiliate, SEM Gas LP each maintain separate gas marketer licences with the Board, they both operate under the same trade name: Superior Energy Management. Board staff had concerns with the existence of two licences containing the same trade name and submitted that this would cause confusion as to the entity supplying the consumer and for the Board’s Reporting & Record Keeping Requirements (the “RRR”). Due to their concerns, Board staff submitted that the licence is not necessary and Superior LP’s application should be denied. Alternatively, Board staff submitted that if the licence were granted, the legal and regulatory obligations should apply to each separate licensee including, but not limited to, the need for separate certifications in accordance with section 6 of the Code of Conduct for Gas Marketers (the “Code”) and separate reporting in accordance with the Board’s RRR.

In its response to Board staff's submission, Superior LP stated that, were the Board to deny its application then, given its existing customer enrollments, Superior LP would be operating without a licence contrary to section 48 of the Act. Superior LP submitted that it would be inappropriate for the Board to knowingly place Superior LP in that position. Superior LP included in its submission further information regarding the new contracts entered into under its licence, and the reasons for the co-existence of two licences. To address Board staff's concerns, Superior LP proposed that the Board grant the licence on the condition that SEM Gas LP would later apply to the Board for an amendment to its licence GM-2012-0038 that would preclude SEM Gas LP from entering into new or renewed low-volume gas supply contracts. Superior LP suggested that the Board consider conditioning the grant of Superior LP's licence application on an application brought by SEM Gas LP to amend licence GM-2012-0038 in accordance with that proposal. Superior LP stated that the Board could specify that if the contemplated SEM Gas LP application is not brought within 2 months of the date of the decision, the Superior LP licence would be automatically suspended.

Superior LP agreed with Board staff's recommendation of having separate certifications for both licences in accordance with the Code and the RRR.

## Findings

The application of Superior LP for a renewal of its gas marketer licence is granted, but the licence will have a term of only 18 months. The standard term for a gas marketer licence is 5 years. While I am not prepared to deny the application as suggested by Board staff, the conduct of Superior in operating for a period of time without a licence and failing to adhere to the undertakings it made when it applied for licence GM-2007-0621 cause concern.

Superior LP's previous licence expired in September 2012. Superior LP did not renew the licence prior to the expiry date and only took steps to renew two months after the licence expired. In addition, the original licence and the interim licence were granted on the understanding that no new low-volume contracts would be entered into. As Superior LP stated in its response to Board staff's interrogatories, however, approximately 17,000 new contracts have since been acquired.

In its submission, Superior LP explained to the Board that the Superior group wishes to continue marketing to new and existing low-volume consumers as Superior Energy Management under the Superior LP licence (GM-2012-0448) as opposed to the SEM

Gas LP licence (GM-2012-0038), and provided reasons underpinning this preference. This request is the reverse of the proposal put forward as part of the application for licence GM-2007-0621. At that time, Superior LP indicated that it would need that licence only to continue to administer legacy contracts, and that the licence would be cancelled once the term of all legacy contracts had ended. The reasons now given by Superior LP for its failure to abide by its original stated intentions relate to gas supply arrangements and the difficulties involved in having two distinct supply accounts within a single retailer profile. Having read the interrogatory answers and submission of Superior LP, I am not convinced that consumers derive any benefit from the existence of two licences held “within a single retailer profile”. I accept that the concerns raised by Board staff regarding customer confusion and effective monitoring of the activity under each licence have some legitimacy.

Superior LP suggested that the Board could require SEM Gas LP to forthwith apply for an amendment of its licence (GM-2012-0038) so that SEM Gas LP (and not Superior LP) would be precluded from entering into new low-volume gas contracts in the future. However, given the history of these licences, I am not persuaded that it is in the public interest to permit Superior LP and its affiliate SEM Gas LP to continue to operate indefinitely with individual gas marketer licences. At the same time, I accept the submission of Superior LP that to deny this application would be inappropriate given Superior LP’s current activity under the licence.

I am not placing conditions on the instant licence to restrict activity under the licence. However, I recommend that Superior LP and SEM Gas LP use the next 12 months to regularize their gas supply arrangements so as to be able to operate with one licence under the Superior Energy Management name and transition all of their low-volume customers to that licence. I further recommend that within the next 18 months, one of Superior LP and SEM Gas LP apply to have one of the licences cancelled (and begin in a timely manner the process of renewing the licence I am now granting, if that licence is to be the continuing licence).

I cannot bind a future decision maker of the Board. However, I recommend that if no request for cancellation is forthcoming, and Superior LP seeks to renew its gas marketer licence, then the Board, at that time, begin a proceeding on its own motion to amend the term of licence GM-2012-0038 (the licence of SEM Gas LP), so that the Board can consider the licences simultaneously.

**IT IS THEREFORE ORDERED THAT:**

1. A gas marketer licence is granted to Superior Plus L.P. on such conditions as are contained in the attached licence.
2. The licence will be valid for a period of 18 months from the date of this Decision and Order.

**DATED** at Toronto, April 25, 2013

**ONTARIO ENERGY BOARD**

*Original signed by*

Jennifer Lea  
Counsel, Special Projects