



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2017-0020 & EB-2017-0021

SUNWAVE GAS & POWER INC.

**Applications for an Electricity Retailer Licence and a
Gas Marketer Licence**

BY DELEGATION,

BEFORE: **Brian Hewson**
Vice President, Consumer Protection & Industry Performance

June 8, 2017

INTRODUCTION AND SUMMARY

Sunwave Gas & Power Inc. applied for a renewal of its electricity retailer licence (ER-2011-0343) and gas marketer licence (GM-2011-0299), each of which are set to expire June 20, 2017. For the reasons set out below, the applications are approved.

THE PROCESS

Sunwave Gas & Power Inc. (Sunwave) filed an electricity retailer licence application under section 60 of *Ontario Energy Board Act, 1998* (OEB Act) and a gas marketer licence application under section 50 of the OEB Act on January 30, 2017. The Ontario Energy Board (OEB) combined the applications into one proceeding, pursuant to section 21(5) of the OEB Act.

The OEB issued a combined Notice of Applications and Written Hearing (Notice) on February 16, 2017, inviting persons to intervene in the hearing or to comment on the applications. No one responded to the Notice. OEB staff participated in the hearing and filed written interrogatories on March 24, 2017. Sunwave responded to OEB staff's interrogatories on April 12, 2017. OEB staff filed a submission on the application on April 27, 2017. Sunwave responded to the submission on May 8, 2017.

This Decision and Order is being issued by Delegated Authority, pursuant to Section 6 of the OEB Act.

FINDINGS

An applicant for the issuance or renewal of a licence that allows for the retailing of electricity (an electricity retailer licence) or the marketing of gas (a gas marketer licence) to residential or small business consumers must meet the minimum requirements set out in Ontario Regulation 90/99 "Licence Requirements – Electricity Retailers and Gas Marketers", made under the OEB Act:

1. Having regard to the financial position of the applicant, the applicant can reasonably be expected to be financially responsible in the conduct of business;
2. The past conduct of the applicant affords reasonable grounds for belief that the applicant will carry on business in accordance with law and with integrity

and honesty;

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;
4. The applicant is not carrying on activities that are, or will be, if the applicant is licensed, in contravention of the Act or the regulations or the rules made under Part III of the Act;
5. If the applicant is an individual, the applicant is at least 18 years old.

Ontario Regulation 90/99 also specifies that if any of the foregoing requirements are not met by the applicant, the licence shall not be issued or renewed.

In its submission on the applications, OEB staff stated that Sunwave meets the requirements for the renewal of its electricity retailer licence and gas marketer licence. In OEB staff's view, the applicant can reasonably be expected to be financially responsible in the conduct of its business and has adequate technical capabilities to operate in the Ontario market. With respect to the applicant's conduct, OEB staff noted that Sunwave was subject to sanctions by the OEB in 2014 for certain contraventions of the *Energy Consumer Protection Act, 2010* and the Codes of Conduct for Gas Marketers and Electricity Retailers. However, OEB staff concluded that based on Sunwave's current energy retailing activities that are limited to maintaining existing contracts with low volume consumers until their expiry (in December 2019), Sunwave's systems, policies, procedures and controls are appropriate to comply with its statutory and regulatory obligations.

Sunwave's applications for renewal of its gas marketer and electricity retailer licences are granted. When evaluating an application for an electricity retailer licence or a gas marketer licence, the OEB focuses its consideration on the requirements set out in Ontario Regulation 90/99; in particular, the applicant's financial position, technical capability to operate in the market, and conduct. The record in this case indicates that Sunwave meets these requirements. As Sunwave currently is neither acquiring new low volume consumers nor has plans to acquire low volume consumers in the future, the terms of the licences shall expire December 31, 2019.

IT IS ORDERED THAT:

1. The application for a gas marketer licence is granted, on such conditions as are contained in the attached licence.
2. The application for an electricity retailer licence is granted, on such conditions as are contained in the attached licence.

DATED at Toronto, June 8, 2017

ONTARIO ENERGY BOARD

Original Signed By

Brian Hewson
Vice President, Consumer Protection & Industry Performance



Electricity Retailer Licence

ER-2017-0021

Sunwave Gas & Power Inc.

Valid Until

December 31, 2019

Original Signed By

Brian Hewson
Vice President, Consumer Protection & Industry Performance
Ontario Energy Board
Date of Issuance: June 8, 2017

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1 Definitions

In this Licence:

“**Act**” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

“**consumer**” means a person who uses, for the person’s own consumption, electricity that the person did not generate;

“**Electricity Act**” means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

“**ECPA**” means the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8;

“**Licensee**” means Sunwave Gas & Power Inc.;

“**Market Rules**” means the rules made under section 32 of the Electricity Act; and

“**regulation**” means a regulation made under the Act, the Electricity Act or the ECPA;

“**residential or small business consumer**” means a consumer who annually uses less than 150,000 kWh of electricity;

For the purpose of this Licence, the terms “retailer” and “retailing” do not apply to a Licensed Distribution Company fulfilling its obligations under section 29 of the Electricity Act.

2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act, the Electricity Act, or the ECPA. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of this Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this Licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this Licence:
- a) to sell or offer to sell electricity to a consumer;
 - b) to act as the agent or broker for a retailer with respect to the sale or offering for sale of electricity; and
 - c) to act or offer to act as the agent or broker for a consumer with respect to the sale or offering for sale of electricity.

- 3.2 The Licensee is authorized to conduct business in the name under which this Licence is issued, or any trade name(s) listed in Schedule 1.

4 Obligation to Comply with Legislation, Regulations and Market Rules

- 4.1 The Licensee shall comply with all applicable provisions of the Act, the Electricity Act, the ECPA and regulations under these Acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

5 Obligation to Comply with Codes

- 5.1 The Licensee shall at all times comply with the following Codes (collectively the "Codes") approved by the Board, except where the Licensee has been specifically exempted from such compliance by the Board:
- a) the Electricity Retailer Code of Conduct; and
 - b) the Retail Settlement Code.
- 5.2 The Licensee shall:
- a) make a copy of the Codes available for inspection by members of the public at its head office and regional offices during normal business hours; and
 - b) provide a copy of the Codes to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

6 Agent for Service

- 6.1 If the Licensee does not have an office or other place of business in Ontario, the Licensee shall ensure the continuing appointment at all times of an individual who is a resident of Ontario and is at least 18 years old, or a corporation that has its head office or registered office in Ontario, as the Licensee's agent for service in Ontario on whom service of process, notices or other documentation may be made.

7 Market Power Mitigation Rebates

- 7.1 The Licensee shall comply with the pass through of Ontario Power Generation rebate conditions set out in Appendix A of this Licence.

8 Provision of Information to the Board

- 8.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 8.2 Without limiting the generality of paragraph 8.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the

business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) days past the date upon which such change occurs.

9 Customer Complaint and Dispute Resolution

- 9.1 The Licensee shall participate in a consumer complaints resolution process selected by the Board.

10 Term of Licence

- 10.1 This Licence shall take effect on June 8, 2017 and expire on December 31, 2019. The term of this Licence may be extended by the Board.

11 Fees and Assessments

- 11.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

12 Communication

- 12.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.
- 12.2 All official communication relating to this Licence shall be in writing.
- 12.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail, or by courier;
 - b) ten (10) business days after the date of posting if the communication is sent by regular mail; or
 - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

13 Copies of the Licence

- 13.1 The Licensee shall:
- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
 - b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

SCHEDULE 1 AUTHORIZED TRADE NAMES

None

APPENDIX A

MARKET POWER MITIGATION REBATES

“OPGI” means Ontario Power Generation Inc.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

“ONTARIO POWER GENERATION INC. rebate”

A retailer shall promptly return to a distributor any portion of the rebate received from the distributor which relates to low-volume or designated consumers receiving the fixed commodity price for electricity under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998*, who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer or another party.

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.

ONTARIO POWER GENERATION INC. REBATES

For the payments that relate to the period from May 1, 2006 to April 30, 2009, the rules set out below shall apply.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

“ONTARIO POWER GENERATION INC. rebate”

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.