



EB-2009-0364

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
Universal Energy Corporation for a Gas Marketer
licence.

By delegation, before: Jennifer Lea

DECISION AND ORDER

Background

Universal Energy Corporation (“Universal”) filed an application dated October 9, 2009 with the Ontario Energy Board under section 50 of the *Ontario Energy Board Act, 1998* (“the Act”) for a gas marketer licence. Additional information to complete the application was received by the Board on October 30, 2009.

The Board issued a Notice of Application and Hearing on November 18, 2009. Board staff filed a submission on December 2, 2009 seeking the inclusion of an interrogatory process for this application. A customer of Universal filed a letter of comment on November 30, 2009, objecting to a written hearing process. The applicant filed a response to both the letter and Board staff’s submission on December 9, 2009.

On December 18, 2009, the Board issued Procedural Order No. 1 providing for a written hearing, including an interrogatory phase. Board staff filed interrogatories on January 8, 2010 and Universal responded to the interrogatories on January 26, 2010. The Board issued Procedural Order No. 2 on February 4, 2010 which provided for Board

staff and the applicant to make final submissions on the application. Board staff filed a final submission on February 12, 2010 and a final reply submission was filed by Universal on February 22, 2010.

On March 12, 2010, Universal filed a correction to its response to Board Staff Interrogatory 2 relating to customer complaint data for Just Energy Ontario L.P.. The updated information was brought to the attention of the delegated decision maker.

Issues in this Application

The Board considers a number of issues when deciding whether to license a gas marketer. The primary factors considered are the conduct, financial health and technical capability of the applicant. In this application, no issues were raised regarding the finances or technical capability of Universal. However, concerns were raised regarding the conduct of the applicant.

Gas marketers and electricity retailers in Ontario are required to comply with the Act, regulations under the Act, and the Board's Codes and Rules that apply to their business. Universal, which holds both gas marketer and electricity retailer licences, was subject to two enforcement orders by the Board issued on January 20, 2009 and April 24, 2009. The orders imposed administrative penalties on Universal for a series of contraventions of enforceable provisions, as defined in the Act, which included making false, misleading or deceptive statements to consumers and switching a customer's gas supply without the customer's written permission. In one proceeding, in addition to paying the administrative penalty, Universal also entered into an Assurance of Voluntary Compliance wherein it undertook to conduct quality assurance audits of all positive reaffirmation calls and report on any disciplinary actions taken against its agents as a result of these audits.

In its submissions Board staff proposed that four conditions be imposed on Universal's licence renewal. Three of the conditions related to reporting requirements. In addition, staff proposed that the licence be issued for a term of two years and later be extended to the standard term of five years contingent on the number of customer complaints received by the Board about Universal gas contracts being reduced to ten per three month period.

Universal accepted two of the conditions proposed by Board staff, but objected to the proposal of a two year licence term and to the proposed requirement to report quarterly to the Board on all customer complaints received by Universal in regard to gas contracts.

Board Findings

For the reasons set out below, the gas marketer licence of Universal will be renewed for two years. The order granting the licence imposes three conditions on the applicant, as described in the reasons that follow.

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.

However, circumstances have changed since the imposition of the penalties by this Board. Universal was acquired by Just Energy Income Fund (“Just Energy”) in July of 2009, and none of Universal’s previous management team are involved with the Universal business within Just Energy. Universal is not marketing to gas consumers in Ontario, and has no plans to resume marketing gas in Ontario under the authority of this licence. Another factor considered in granting the licence is that Universal is continuing to supply gas to existing customers, and these contracts would have to be transferred or cancelled if the licence was denied.

Term of the Licence

Although the standard term of a gas marketer licence is five years, I find that Universal’s gas marketer licence will be granted for only two years at this time.

It has been less than a year since Just Energy acquired Universal. It would be advantageous for the Board to have before it evidence of the effectiveness of Just Energy's management of the customer issues acquired with the Universal gas contracts. That evidence will be available only with the passage of time.

In response to interrogatories from Board staff, the applicant stated "There are no current plans to market new contracts under the Universal Energy Corporation licence." The shorter term of two years will enable the Board to review the status of Universal's marketing plans when considering a subsequent application for renewal. If marketing will occur under the authority of the licence, the Board may choose to impose conditions related to marketing activity at that time, which are not needed at the present time.

The applicant submitted that as many of the existing gas supply contracts run for more than two years, limiting the term of the licence to two years presents a significant degree of commercial uncertainty for both Universal and its customers. I find that the public interest in maintaining consumer confidence in the gas market, facilitated through the Board's licensing regime, outweighs any commercial uncertainty that may occur for Universal or its customers. I find that some restriction of term is justified for the renewal of the licence of an entity recently penalized for misleading consumers.

Conditions of the Order granting the Licence

Board staff, in its submission on the application, proposed the imposition of four conditions on the licensee. Universal agreed to two of the four conditions, and these conditions will be part of this order:

a) Universal must notify the Board if it intends to resume marketing under the authority of this licence, and with that notification, provide the following information:

- the date marketing will commence;
- a description of all types of marketing that Universal will use; and
- confirmation that the requisite training of its sales representatives has been undertaken.

b) Universal must immediately notify the Board of the transfer or hiring, directly or indirectly, of any of Universal's previous management team as referenced in Universal's application.

I note and accept Universal's interpretation of the second condition as relating to persons employed or retained by Universal in the capacity of vice-president or a more senior role during or prior to July, 2009.

Universal opposed the other two conditions proposed by Board staff. The first of these contentious conditions was as follows:

“Require the applicant for a period of 24 months from the issuance of the licence to report within thirty days of the end of each quarter on the total number of complaints it received from Ontario customers relating to its gas contracts. Universal should provide an electronic summary of each complaint, detailing the type of concern and the resolution of each complaint, including any reimbursements paid. The report should include information on how the applicant's operational processes are being developed to provide improved management of its gas contracts. This report should be publicly accessible.”

I agree with the submission of the applicant that such reporting is too burdensome for the value of the information that would be provided to the Board. Although the Board receives only a subset of consumer complaints to gas marketers (i.e. only those communicated to the Board) I do not find that the additional reporting suggested by Board staff would be truly useful to the Board. As noted above, the applicant does not presently intend to market to consumers under the authority of this licence, and is required to notify the Board if that intention changes.

However, I do find that quarterly reporting of certain other information would be useful in monitoring the success of Just Energy in managing customer issues related to the Universal gas contracts, and should be required.

In its submission dated February 22, 2010, the applicant stated that:

“Just Energy uses automated marketing and contract management activity monitoring processes to provide early indication of systemic compliance issues. Just Energy acts expeditiously to respond to any such issues.”

With regard to Universal’s gas contracts, the applicant stated in the submission:

“The customer management systems that were used by UEC prior to acquisition of the company by Just Energy no longer exist. UEC’s customers’ records are not integrated, and cannot easily be integrated, into Just Energy’s existing automated reporting systems, and must be managed manually.”

From these statements, it is not clear to me what method Just Energy is using to identify systemic compliance issues arising from the gas contracts originally obtained through marketing by Universal. Even if the Universal customer records may not be part of Just Energy’s automated processes, it is to be presumed that Just Energy has some method of recording complaints from the Universal customers and analyzing the complaint data to identify recurring problems. An example of a systemic issue would be a cluster of complaints regarding contracts originally entered into through the marketing efforts of a particular agent or independent contractor.

It will be a condition of this order that Universal (or Just Energy on behalf of Universal) provide quarterly the following information:

- confirmation that during the preceding quarter, the nature of all complaints received by Universal (or Just Energy) regarding the Universal gas contracts has been recorded and reviewed;
- a description of any systemic problems with these contracts that have been identified; and
- a statement of any action taken by Universal (or Just Energy on behalf of Universal) to remedy the identified problems.

The quarterly reporting must be filed with the Board through the Board Secretary’s office, referencing the file number of this decision and order (EB-2009-0364). The first period to be covered by the reporting will be from the date of this order to June 30, 2010, and must be filed no later than July 30, 2010. Subsequent quarterly reports must be filed no later than 30 days after the end of the reporting period. The quarterly reporting requirement ends with the report for the quarter ending September 30, 2011.

Such reporting will assist the Board in evaluating Just Energy's success in remedying any outstanding issues arising from Universal's former marketing activity.

The second condition recommended by Board staff and opposed by Universal was:

“Consider licensing the applicant for a two year period with a view to extending the term of the licence to the full five year term, contingent upon the number of complaints relating to gas contracts being reduced to no more than 10 complaints per quarter.”

As indicated above, this licence will be renewed for a two year term, but no further contingencies will be imposed regarding its extension or renewal. Board staff provided no reasons to suggest that the benchmark of ten complaints per quarter was reasonable, and I accept the submission of the applicant that such a target is unrealistic at present.

IT IS THEREFORE ORDERED THAT:

1. The application for a gas marketer licence is granted, for a period of two years.
2. The licensee shall abide by the following conditions:
 - a) Universal (or Just Energy on behalf of Universal) must notify the Board if it intends to resume marketing under the authority of this licence, and with that notification, provide the following information:
 - the date marketing will commence;
 - a description of all types of marketing that Universal will use; and
 - confirmation that the requisite training of its sales representatives has been undertaken.
 - b) Universal (or Just Energy on behalf of Universal) must immediately notify the Board of the transfer or hiring, directly or indirectly, of any of Universal's previous management team.
 - c) Universal (or Just Energy on behalf of Universal) must provide quarterly the following information:

- confirmation that during the preceding quarter, the nature of the complaints received regarding the Universal gas contracts has been recorded and reviewed;
- a description of any systemic problems with these contracts that have been identified; and
- a statement of any action taken by Universal (or Just Energy on behalf of Universal) to remedy the identified problems.

The quarterly reporting must be filed with the Board through the Board Secretary's office, referencing the file number of this decision and order (EB-2009-0364). The first period to be covered by the reporting will be from the date of this order to June 30, 2010, and must be filed no later than July 30, 2010. Subsequent quarterly reports must be filed no later than 30 days after the end of the reporting period. The quarterly reporting requirement ends with the report for the quarter ending September 30, 2011.

DATED at Toronto, April 1, 2010.

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects