



ONTARIO ENERGY BOARD

STAFF SUBMISSION

APPLICATION FOR RENEWAL OF A
GAS MARKETER LICENCE
BY
UNIVERSAL ENERGY CORPORATION

EB-2009-0364

December 2, 2009

Background

On October 9, 2009, Universal Energy Corporation (“Universal”) filed an application with the Board for a renewal of its gas marketer licence. Additional information to complete the application was filed on October 30, 2009.

The Board issued a Notice of Application on November 17, 2009 requiring submissions by interested parties to be filed by December 2, 2009 and any response by the applicant to be filed by December 9, 2009.

Upon receipt of a gas marketer or electricity retailer licence application Board staff review the materials contained in the application and the applicant’s history. Staff will make a submission if there are issues that are of concern and may recommend conditions be placed on a licence. In reviewing an applicant’s history, staff examines the applicant’s conduct in Ontario and other jurisdictions, the background of key individuals in the organization, and its financial information. Staff may also bring forward information pertaining to the applicant’s conduct, or the conduct of any affiliates, in other jurisdictions.

On December 22, 2008, the Board’s Compliance Office published a Notice of Intention to Make an Order for an Administrative Penalty (“Notice”) against Universal for contravening certain enforceable provisions of the Ontario Energy Board Act (“Act”) and the Electricity Retailer Code of Conduct.

The Notice states that the Board conducted a formal review beginning in September 2007 of selected Universal recorded reaffirmation calls and a further review of calls made in June 2008 as part of the Retail Compliance Review. The Board found that Universal contravened section 88.4 of the Act, in that it engaged in an unfair practice as defined in section 2 of Ontario Regulation 200/02, by making false, misleading or deceptive statements to consumers. Universal also contravened section 2.3 of the Electricity Retailer Code of Conduct by supplying low volume consumers without a valid reaffirmation.¹

¹ Notice of Intention to Make an Order for an Administrative Penalty under s. 112.5 of the *Ontario Energy Board Act, 1998*, issued on December 22, 2008.

On April 23, 2009, the Board's Compliance Office published a second Notice against Universal for contravening certain enforceable provisions of the Act, the Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers.

The second Notice states that on March 20, 2009, the Canadian Broadcasting Corporation aired its Marketplace program which featured Universal door-to-door sales agents making false, misleading or deceptive statements to consumers. As a result, Universal contravened section 88.4(3) of the Act in that it engaged in an unfair practice as defined in section 2 of Ontario Regulation 200/02 and also contravened section 2.1 of the Electricity Retailer Code of Conduct. Universal also submitted a request to a gas distributor for a change of gas supply for a consumer to Universal without the permission of the consumer in writing thereby contravening section 2.3 of the Code of Conduct for Gas Marketers.²

Electricity Retailer Code of Conduct

Section 2 of the Board's Electricity Retailer Code of Conduct deals with fair marketing practices.

Section 2.1 (f) states that:

"A retailer or salesperson of a retailer, when retailing to a consumer, shall not make any representation or statement or give any answer or take any measure that is false or is likely to mislead a consumer".³

Section 2.3 (b) states that

"A retailer shall not supply electricity to a consumer unless the retailer has the permission of the consumer in writing to do so, and has received the notice of reaffirmation from the consumer, where reaffirmation is required."⁴

² Notice of Intention to Make an Order for an Administrative Penalty under s. 112.5 of the *Ontario Energy Board Act, 1998*, issued on April 23, 2009.

³ Electricity Retailer Code of Conduct, Ontario Energy Board, December 20, 2004.

⁴ Electricity Retailer Code of Conduct, Ontario Energy Board, December 20, 2004.

Code of Conduct for Gas Marketers

Section 2 of the Board's Code of Conduct for Gas Marketers deals with fair marketing practices.

Section 2.1 (f) states that:

"A gas marketer or salesperson of a gas marketer, when marketing to a consumer, shall not make any representation or statement or give any answer or take any measure that is false or is likely to mislead a consumer".⁵

Section 2.3 (a) states that:

"A gas marketer shall not submit a request to a gas distributor for a change of gas supply for a consumer to that gas marketer unless the gas marketer has the permission of the consumer in writing to do so".⁶

Staff Submission

The Notices indicate several instances of infractions by Universal and constitute a significant concern that should be brought to the attention of the decision maker. Maintaining public confidence in the retail energy market is important as gas marketers and electricity retailers do business directly with the consumer. It is critical that the Board ensure that marketers and retailers are in compliance with the applicable rules.

Given the infractions outlined above, staff submits that there are concerns with Universal's past conduct. Staff also notes a news article in the Ottawa Citizen dated December 2, 2009 which mentions that a number of complaints have been filed with the Better Business Bureau relating to Universal's sales practices and contract issues.

Also, the Board recently approved new application forms for electricity retailers and gas marketers which require applicants to provide additional information beyond what was required in the application form completed by Universal. Staff submits that an interrogatory process should be provided for in this proceeding to permit staff to request additional information from the applicant. Staff further submits that this hearing should

⁵ Code of Conduct for Gas Marketers, Ontario Energy Board, December 20, 2004.

⁶ Code of Conduct for Gas Marketers, Ontario Energy Board, December 20, 2004.

still proceed as a written hearing but, depending on the information provided in the interrogatory process, it may be appropriate to have an oral component to the proceeding.

Appendix A attached: Notices of Intention to Make an Order for an Administrative Penalty – Universal Energy Corporation

All of which is respectfully submitted.

**APPENDIX A:
NOTICES OF INTENTION TO MAKE AN ORDER FOR AN ADMINISTRATIVE
PENALTY – UNIVERSAL ENERGY CORPORATION**