



# **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.<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup>

### **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".<sup>3</sup>

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."<sup>4</sup>

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<sup>2</sup> 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.

<sup>3</sup> Electricity Retailer Code of Conduct, Ontario Energy Board, December 20, 2004.

<sup>4</sup> 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".<sup>5</sup>

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".<sup>6</sup>

## **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

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<sup>5</sup> Code of Conduct for Gas Marketers, Ontario Energy Board, December 20, 2004.

<sup>6</sup> 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**



**NOTICE OF INTENTION TO MAKE AN ORDER FOR AN ADMINISTRATIVE  
PENALTY UNDER s. 112.5  
UNIVERSAL ENERGY CORPORATION**

The Ontario Energy Board (the "Board"), on its own motion, intends to make an Order under subsection 112.5 of the *Ontario Energy Board Act, 1998* (the "Act") requiring Universal Energy Corporation ("Universal") to pay an administrative penalty in the amount of \$200,000 for contravening certain enforceable provisions of the Act.

The Board intends to make this Order based on evidence obtained through both: a formal review of selected Universal recorded reaffirmation calls made in March, April and May 2007 as well as a further review of recorded calls made in June 2008 as part of the Board's Retail Compliance Review. The particulars of non-compliance are as follows:

1. As part of a formal review initiated in September 2007 the Board finds that in 57 recorded calls with low volume electricity consumers, Universal has contravened section 88.4 of the Act, in that it has engaged in an unfair practice as defined in section 2 of Ontario Regulation 200/02, by making false, misleading or deceptive statements to low volume consumers as follows:
  - a. Universal representatives indicate that an electricity price protection program is being offered because the Ontario Energy Board and / or the government is cancelling the Regulated Price Plan in May 2008;
  - b. Universal representatives indicate that consumers will become subject to the true cost of power and will pay market prices for electricity starting in May 2008; and
  - c. Universal representatives indicate the government is deregulating electricity prices and / or removing the price cap in May 2008.

A list of the identified non-compliant recorded calls is attached as Appendix A to this Notice.

2. Further, as part of the Retail Compliance Review, the Board finds that Universal, in three transactions has contravened section 88.4 of the Act in that it has engaged in an unfair practice as defined in section 2 of Ontario Regulation 200/02, by making false, misleading or deceptive statements to consumers as follows:

- a. Consumers currently pay subsidized electricity rates;
- b. Consumers will become subject to the true cost of power in 2009 as the government is scheduled to remove the subsidy;
- c. The government is paying a portion of your electricity bill monthly;
- d. The government may cancel the regular rate adjustment in 2009; and
- e. Consumers will be subject to paying the true cost of hydro which fluctuates.

These three transactions are listed in Appendix B.

3. Board finds that in 7 transactions Universal is non-compliant with section 2.3 of the Board's Electricity Retailer Code of Conduct by supplying low volume consumers without a valid reaffirmation. (A list of these transactions is set out in Appendix C).

Universal may request the Board hold a hearing on these matters within 15 days after receiving the Notice.

If no hearing is requested within the time permitted the Board may make an order that Universal shall pay an administrative penalty in the amount of \$200,000 pursuant to s. 112.5 of the Act.

If a hearing is requested, the Board is not bound by the above noted penalty and has discretion, upon finding a contravention(s) of the Act, to make any order it deems appropriate under s. 112.3, 112.4 or 112.5 of the Act.

In order to respond to this Notice and request a hearing, Universal must file 6 copies of



this request with the office of the Board Secretary.

If a hearing is requested, Universal is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Universal fail to attend, the hearing may be conducted in its absence and Universal will not be entitled to any further notice in the proceeding.

The hearing will proceed before a Panel of the Board, at the offices of the Ontario Energy Board, 2300 Yonge Street, Toronto, Ontario on a date to be set by the Board.

**Dated** at Toronto, December 22, 2008

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary

## APPENDIX A

### Universal Energy Corporation Recorded Calls with Low-Volume Electricity Consumers March 2007

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#### DVD 01

File Name	Size
1. 2007-03-07_20_42_46	(231 KB)
2. 2007-03-07_20_31_13.wav.32073	(201 KB)
3. 2007-03-05_20_09_25	(209 KB)
4. 2007-03-07_12_52_09	(209 KB)
5. 2007-03-03_15_18_01	(200 KB)
6. 2007-03-06_15_19_20	(226 KB)
7. 2007-03-05_11_16_06	(231 KB)
8. 2007-03-03_11_17_18.wav.11443	(232 KB)
9. 2007-03-05_16_04_27	(233 KB)

**Universal Energy Corporation**  
**Recorded Calls with Low-Volume Electricity Consumers**  
**April 2007**

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**DVD 07**

File Name:

Size:

1. 2007-04-09_18_46_15	(300 KB)
2. 2007-04-10_19_33_58	(200 KB)
3. 2007-04-10_17_53_10	(209 KB)
4. 2007-04-13_14_09_53	(OEB File Number 2007-0008249)
5. 2007-04-13_11_55_07	(200 KB)
6. 2007-04-13_15_17_04	(200 KB)
7. 2007-04-09_20_23_18	(201 KB)
8. 2007-04-12_18_15_58	(202 KB)
9. 2007-04-11_09_59_03	(202 KB)
10. 2007-04-11_19_25_35	(231 KB)
11. 2007-04-10_09_57_27	(232 KB)
12. 2007-04-13_17_02_41	(232 KB)
13. 2007-04-11_19_19_57	(233 KB)
14. 2007-04-09_19_14_45	(246 KB)
15. 2007-04-09_15_45_12	(246 KB)
16. 2007-04-08_12_58_07	(252 KB)
17. 2007-04-10_09_57_33	(284 KB)
18. 2007-04-13_16_37_09	(285 KB)
19. 2007-04-13_10_03_02	(285 KB)
20. 2007-04-08_10_01_43	(286 KB)
21. 2007-04-13_19_17_32	(286 KB)
22. 2007-04-08_09_58_57	(287 KB)
23. 2007-04-12_12_48_01	(288 KB)
24. 2007-04-11_20_13_55	(289 KB)
25. 2007-04-11_14_26_40	(290 KB)
26. 2007-04-13_10_26_29	(290 KB)
27. 2007-04-10_09_31_59	(290 KB)
28. 2007-04-13_19_12_25	(293 KB)
29. 2007-04-13_13_06_46	(293 KB)
30. 2007-04-13_09_05_56	(298 KB)
31. 2007-04-13_19_56_19	(298 KB)
32. 2007-04-08_11_03_27	(298 KB)
33. 2007-04-13_15_32_29	(300 KB)
34. 2007-04-08_16_01_47	(302 KB)
35. 2007-04-11_11_03_37	(302 KB)
36. 2007-04-09_10_59_08	(307 KB)
37. 2007-04-13_17_05_35	(308 KB)
38. 2007-04-08_13_53_04	(310 KB)
39. 2007-04-09_09_28_18	(435 KB)
40. 2007-04-09_20_40_00	(436 KB)
41. 2007-04-09_09_43_06	(442 KB)
42. 2007-04-11_10_25_58	(442 KB)
43. 2007-04-12_16_18_52	(822 KB)
44. 2007-04-11_15_57_05	(916 KB)
45. 2007-04-10_17_16_15	(932 KB)
46. 2007-04-12_20_10_49	(1,000 KB)

**Universal Energy Corporation  
Recorded Calls with Low-Volume Electricity Consumers  
May 2007**

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**DVD 14**

File Name	Size
1. 2007-05-26_12_11_41	(209 KB)
2. 2007-05-23_13_19_49	(212 KB)

## **APPENDIX B**

### **Universal Energy Corporation Recorded Calls with Low-Volume Electricity Consumers June 2008**

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#### **Contract Number**

1. 13125805
2. 13103134
3. 13128599

## APPENDIX C

### Universal Energy Corporation Low-Volume Electricity Consumers Supplied without Valid Reaffirmation

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#### Contract Number

1. 50782151
2. 50778527
3. 50760018
4. 50781832
5. 50789339
6. 50334307
7. 13125805



**EB-2009-0118**

**IN THE MATTER OF** the *Ontario Energy Board Act*,  
1998, S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** a Notice of Intention to  
Make an Order for an Administrative Penalty against  
Universal Energy Corporation.

**NOTICE OF INTENTION TO MAKE AN ORDER FOR AN ADMINISTRATIVE  
PENALTY UNDER s. 112.5 of the *Ontario Energy Board Act*, 1998**

The Ontario Energy Board (the "Board"), on its own motion, intends to make an Order under subsection 112.5 of the *Ontario Energy Board Act*, 1998 (the "Act") requiring Universal Energy Corporation ("Universal") to pay an administrative penalty in the amount of \$60,000 for contravening certain enforceable provisions of the Act, the Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers.

**PARTICULARS**

The particulars of non-compliance are as follows:

1. On March 20, 2009 the Canadian Broadcasting Corporation aired its Marketplace program which highlighted the conduct of door-to-door sales agents of electricity retailers and gas marketers. Universal door-to-door agents are shown on video making false, misleading or deceptive statements to consumers. Universal has therefore contravened section

88.4(3) of the Act, in that it has engaged in an unfair practice as defined in section 2 of Ontario Regulation 200/02. Universal has also contravened section 2.1 of the Electricity Retailer Code of Conduct. More specifically the Marketplace program features:

- a. a Universal sales agent with the initials C.C., employed by Universal from October 24, 2008 to November 4, 2008 making statements such as:
    - “I pretty much can guarantee that you will not get today's rate 5 years from now. You may start a little bit higher than what you're paying right now, but in 5 years time these protection plans have always proven to save at least a thousand dollars over the 5-year period. “and,
    - “Most of the neighbours already have protection set up with them, okay?”
  - b. a Universal sales agent with the initials M.C., employed by Universal from October 27, 2008 to November 16, 2008 is shown making statements such as:
    - “If the prices goes down, then this one, at anytime, you could call them and you could tell them you want it for the lower the rate and for five years.”;
    - “If you're not protected your prices are going to go up every six months”; and,
    - “Okay, that's fine, but you have to face the consequences of the price increase from November 1st. I'll write that down.”
2. Also shown on the Marketplace program was an interview with a consumer, A.M. and her experience with Universal. A Universal sales agent with the initials M.P., employed by Universal from March 8, 2007 to mid May 2007, allegedly forged A.M.'s dead husband's signature on a contract with Universal signed on May 11, 2007. Universal submitted a



request to the 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. Universal became aware of the forgery complaint during an attempted reaffirmation call made May 24, 2007.

**THEREFORE TAKE NOTICE** that Universal may request, within fifteen days after receiving this Notice, that the Board hold a hearing on these matters. If no request for hearing is made within this time period, the Board may proceed to make an Order that Universal pay an administrative penalty in the amount of \$60,000 pursuant to s. 112.5 of the Act.

**FURTHER TAKE NOTICE** that if a hearing is requested, the Board is not bound by the above noted penalty and has discretion, upon finding a contravention(s) of the Act, to make any order it deems appropriate under s. 112.3, 112.4 or 112.5 of the Act, which includes making an Order for an administrative penalty, a compliance Order or an Order for suspension or revocation of Universal's licence. Universal is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Universal fail to attend, the hearing may be conducted in its absence and Universal will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, Universal must file 6 copies of this request with the office of the Board Secretary at the following address:

Ontario Energy Board  
P.O.Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
Attention: Board Secretary

Email: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)

Tel: 1-888-632-6273  
Fax: 416 440-7656

If a hearing is requested it will proceed before a Panel of the Board, at the offices of the Ontario Energy Board, 2300 Yonge Street, Toronto, Ontario on a date to be set by the Board.

**DATED** at Toronto, April 23, 2009

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary