

APPLICATION FOR RENEWAL OF GAS MARKETER LICENCE GM-2004-0537

Response of Universal Energy Corporation /Just Energy To Written Submissions

Introduction

1. Universal Energy Corporation (UEC) filed an Application with the Board on or about October 8, 2009 for renewal of its Gas Marketer Licence GM-2004-0537. As indicated in UEC's application¹, effective July 1, 2009, all of the issued and outstanding shares of Universal Energy Group Limited, which owns UEC, were indirectly acquired by Just Energy Income Fund (Just Energy). In the result, UEC is now wholly owned by Just Energy.
2. Just Energy is licenced by the Ontario Energy Board (OEB or Board) to retail natural gas [Licence GM-2005-0316] and electricity [Licence ER-2005-0314]. Just Energy, previously operating as Ontario Energy Savings, has been retailing energy products in Ontario since 1997.
3. This is the Response of UEC/Just Energy to the submissions of OEB Staff dated December 2, 2009 in respect of the subject gas marketer licence renewal application.
4. UEC/Just Energy (the Applicant) submits that the Board should proceed to grant the licence renewal applied for.

The Record Herein

5. The record on this Application consists of the following primary documents:
 - (a) Application for Licence to Market Natural Gas (Renewal Application) filed October 9, 2009.

¹ Response to Question 11, page 7.

- (b) Supplementary application information provided by letter to the Board Secretary dated October 29, 2009 from Nola Ruzycki on behalf of the applicant (in response to letter from the Board dated October 22, 2009 requesting additional information).
 - (c) Staff Submission dated December 2, 2009.
6. Just Energy has also reviewed a letter dated November 30, 2009 to Nola Ruzycki of Just Energy from Sami Amer, an individual. A copy of this letter was e-mailed to the Board Secretary on November 30, 2009. While this letter is not in the electronic document repository associated with this Application, the subject line of Mr. Amer's e-mail to the Board Secretary refers to the docket number of this Application, and states as follows:
- I strongly object to a written hearing for granting [sic] gas marketer license for Universal Energy Corporation License Number: GM-2004-0537.*
- Please see attached a letter for [sic] my reasons.*
7. Just Energy comments further on this letter later in these submissions. For the convenience of the Board, a copy of this letter, and the covering e-mail directed to the Board Secretary, is attached to this Response.

Further Clarification of the Application

8. Before responding to the Staff Submission, for the assistance of the Board Just Energy would like to clarify two aspects of the Application.
9. In response to question 5 of the Application (*Does your company intend to use trade names*), the Applicant responded "no". However, the Applicant proceeded to list two trade names; Wholesale Energy and Energy One.²
10. By way of clarification, while the Applicant does not currently market under these two trade names, it does own them. Just Energy wishes to reserve the right to use these trade names for marketing gas in Ontario should it choose to do so in the future. Accordingly,

² Application, Question 5, page 3.

the Applicant requests that the Board include these two trade names in the licence renewal requested herein.

11. In response to question 9 of the Application ((a) *How many low-volume consumers do you expect to serve each year?* b) *What is the average number of cubic meters of gas you plan to sell?*), the Applicant responded that UEC is currently not marketing in Ontario. By way of supplementary information provided by the letter noted in subparagraph 5(b) above, Just Energy clarified that while UEC is not currently marketing to new customers in Ontario, UEC has approximately 70,000 existing gas supply contracts, under which it currently flows approximately 200 Bcf of gas.
12. By way of clarification, while the Applicant does not currently intend to market to new customers under the UEC name, it wishes to reserve the right to do so should it choose to in the future.
13. In any event, as gas is currently flowing under these existing UEC contracts, renewal of the licence that is the subject of this Application is required.

Response to Staff Submission

2008/2009 UEC Administrative Penalties.

14. Staff's submission commences, in substance, with the following statement: *Staff will make a submission [regarding a retailer licence application] if there are issues that are of concern and may recommend conditions be placed on a licence.*³
15. Staff then goes on to note that the Board has issued two Notices of Intention to Make an Order for an Administrative Penalty against UEC. The first Notice of Intention was issued on December 22, 2008, and the second was issued on April 23, 2009.

³ Staff Submission, page 2, 3rd paragraph.

16. In respect of these two Notices of Intention, Staff states: *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.*⁴
17. In respect of these Notices, Staff continues as follows: *Given the infractions outlined above, staff submits that there are concerns with Universal's past conduct.*⁵
18. Just Energy appreciates Staff's concerns, and its intention to bring these concerns to the attention of the decision maker.
19. As noted in the Application, subsequent to the dates of issuance of the two Notices that are the subject of Staff's concerns, UEC was acquired by Just Energy. As of July 2009, all UEC customer accounts are being managed by Just Energy personnel, under Just Energy processes. Some UEC operational personnel have been retained, and have been integrated into the Just Energy operations organization. Just Energy's management team has assumed full management of, and responsibility for, UEC, and none of UEC's previous management team are involved with the UEC business within Just Energy.⁶
20. Just Energy would note that, operating as Ontario Energy Savings, it was the subject of an Administrative Penalty in 2003, related to alleged forgeries dating from 2001 and 2002. This Administrative Penalty and a similar one issued against Direct Energy were the first levied by this Board following retail energy market opening in Ontario. Both the Ontario Energy Savings and the Direct Energy Administrative Penalties related to alleged forgeries that had occurred years prior to their issuance, and prior to institution of the reaffirmation regime for low-volume energy consumers, which regime has essentially eliminated forgeries as an issue in Ontario's low-volume retail energy market.
21. The recent UEC administrative penalties occurred under the watch of previous UEC management. UEC is now fully integrated into Just Energy's Ontario retail energy

⁴ Staff Submission, page 4, 3rd last paragraph.

⁵ Staff Submission, page 4, 2nd last paragraph.

⁶ In the interest of complete disclosure, Just Energy notes that a few of UEC's previous senior personnel are involved with National Home Services, which is a water heater rental company within the Just Energy group.

operations and compliance systems. Since the alleged forgeries that preceded the Administrative Penalty issued against Ontario Energy Savings more than 6 years ago, Just Energy's compliance record has been good, as further discussed below.

Customer Complaints.

22. In addition to noting the Notices of Intent discussed above, the Staff Submission states:⁷

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.

23. Attached to this Response, for the Board's information, is a copy of the news article referred to in the Staff Submission.

24. As noted above, Just Energy is not actively marketing under the UEC name, and has not been since UEC was acquired in July, 2009. The customer and Better Business Bureau information that Staff relies on from this newspaper article all relate to complaints that predate Just Energy's acquisition of UEC.

25. As noted above, since acquiring UEC, Just Energy is serving UEC's existing customers through Just Energy staff and processes, including contract management and compliance processes.

26. Unfortunately, all energy retailers, including Just Energy, have customer complaints. If the existence of complaints were a bar to licencing, there would be no retail energy licences in Ontario.

27. While Just Energy would prefer to have no customer complaints, it is submitted that an important consideration in this respect is what energy retailers do to manage and respond to customer complaints that do arise.

⁷ Staff Submission, page 4, 2nd last paragraph.

28. Just Energy has worked hard to share with OEB Staff Just Energy's approach to compliance. Just Energy uses automated marketing and contract management activity monitoring processes to provide early indication of systemic compliance issues. Just Energy then acts expeditiously to respond to such issues. Further, Just Energy responds promptly to customer complaints through a robust complaint response process.
29. Just Energy wishes to advise the Board that Lynne Cournoyer's complaint, which is the subject of the news article cited by Staff, has been resolved directly with the customer.

New Retailer Licencing Application Forms.

30. The Staff Submission indicates that the Board has recently approved new application forms for electricity retailers and gas marketers. The Staff Submission indicates that these new forms would require applicants to provide additional information beyond what was required in the application form completed by UEC.⁸
31. These new forms were publicly released the day prior to the date for submission of this Response. Just Energy had no previous knowledge regarding the type of "additional information" the new forms contemplate. To Just Energy's knowledge, retailers had not been consulted regarding these new forms, and the forms had never been publicly released until December 7.
32. On behalf of the Applicants, legal counsel has had a brief opportunity to scan the new forms. It appears, from this initial review, that the forms request the following information in addition to that required by the previous forms and provided by the Applicant herein:
 - (a) A customer complaint primary contact.
 - (b) A corporate organization description.
 - (c) A description of the technical resources employed by the applicant in connection with gas marketing activities.

⁸ Staff Submission, page 4, last paragraph.

- (d) High level data on Ontario customer complaints for the applicant and any affiliates, together with a description of any context for that data.
 - (e) High level data from any other jurisdictions on customer complaints for the applicant and any affiliates, together with a description of any context for that data.
33. As draft and approved by Just Energy prior to counsel's review of the just released updated gas marketer licence application form, this submission addresses items (b), (c), and (d), above. Further information on item (d) above is available to the Board as a result of the Board's own processes for tracking customer issues related to Ontario natural gas and electricity retailers.
34. Just Energy can advise that the primary customer complaint contact for UEC is Just Energy's customer service department, who can be reached on 1-866-587-8674, and by e-mail at cs@justenergy.com.
35. This leaves only information on customer complaints in other jurisdictions regarding UEC and any energy retailing affiliates. Just Energy does not have time prior to the submission date for this response to gather and provide that data.
36. In respect of the need to provide further information in support of this gas marketer licence renewal application, while Just Energy is, and has always been, open and cooperative with the Board, it does have a concern about "changing the rules" in the middle of the process. The UEC gas marketer licence expires early in February, which is now less than two months away. It is submitted that as a matter of both procedural fairness and commercial efficacy, Just Energy should reasonably be able to expect some certainty regarding the process and requirements for renewing this licence.
37. Just Energy has applied for renewal of this licence under the current process, as that process has been conducted by the Board for some time. As a matter of fairness any process or information requirements for retail licencing should be applied prospectively, and not retroactively. To do otherwise would be unfair, and would undermine reasonable commercial planning and cost certainty.

38. As it turns out, this response provides much of the information that the new retailer licencing forms just released contemplate. Just Energy submits that, for the purposes of this licence renewal, which was commenced under the pre-existing application process, the Board has sufficient information, and fairness commends granting of the requested renewal without further delay.

Interrogatories.

39. Following reference to the new application forms for electricity retailers and gas marketers, the Staff Submission goes on to suggest an interrogatory process in this Application, *"to permit staff to request additional information from the applicant"*.⁹

40. The Staff Submission does not offer any description of what additional information Staff might seek through interrogatories.

41. It is submitted that an interrogatory process to effectively implement a new or expanded licencing regime would present the same procedural unfairness as applying a new set of forms and application parameters to this renewal application at this late stage.

42. Just Energy wishes to respectfully advise the Board that Board Staff initially indicated, upon receipt of UEC's renewal Application, that it was considering suspending processing of this Application pending release of the new forms that are now referred to in the Staff Submission. (No further details of such forms were provided to Just Energy at the time.) Just Energy objected to such delay, given the imminent expiration of the UEC licence. Processing of this Application was then proceeded with. Staff requested additional information in accord with the current Application process, and such information was provided.¹⁰

43. It appears to Just Energy that Staff are now seeking to retroactively adopt the new process made public within the last 24 hours through an expanded process for the current Application.

⁹ Staff Submission, Page 4, bottom.

¹⁰ See paragraph 5(b), above.

44. Just Energy is not aware of any precedent for an interrogatory stage in this type of retail licence renewal application.
45. Just Energy again submits that this response provides much of the information that the new retailer licencing forms just released contemplate. Just Energy submits that, for the purposes of this licence renewal, which was commenced under the pre-existing application process, the Board has sufficient information, and fairness commends granting of the requested renewal without further delay.

Conclusion on Staff Submission.

46. As noted above¹¹, Staff characterizes its role in these types of retail licencing applications as drawing any concerns to the attention of the decision maker, and recommending conditions that should be placed on any licence granted.
47. While the Staff Submission herein notes some concerns, which have been addressed above, Staff has not proposed any relief or conditions as a result of such concerns (save for a suggestion that further unspecified information be gathered through an unprecedented interrogatory process).
48. Just Energy respectfully submits that there is no basis raised by Staff upon which the Board should direct further steps in this process, or deny this Application for renewal.
49. Just Energy reserves the right to respond further should Staff propose any specific conditions.

Response to Sami Amer Letter

50. The letter from Mr. Amer noted above¹² is addressed directly to UEC, and is not itself a submission with respect to this Application. Rather it requests cancellation of the customer's contract (which has been cancelled, through resolution directly with the customer).

¹¹ Paragraph 14, above.

¹² Paragraph 6, above.

51. It was, however, sent to the Board Secretary with a covering note referencing this proceeding, as noted above.¹³ Mr. Amer, in his covering e-mail to the Board Secretary, objects to a written hearing, rather than the granting of this Application.
52. In any event, Mr. Amer's letter suggests that his objection may have been primarily intended to get UEC's attention to resolution Mr. Amer's contract dispute, which dispute has now been resolved to Mr. Amer's satisfaction
53. Mr. Amer's contract has been cancelled, without additional charge. The sales agent referred to in Mr. Amer's letter has been identified and Just Energy's compliance group has conducted a thorough review of the allegation. Based on our review we have decided to put the agent through re-training course and to issue a monetary penalty against him.

Conclusion

54. In conclusion, UEC/Just Energy submit that:
 - (a) Given the assumption by Just Energy of the customer care and contract management obligations of UEC from and after July, 2009, the Board should not be concerned regarding UEC's previous history of compliance infractions and customer complaints. Rather, it is Just Energy's compliance status that should be the relevant consideration regarding this application for licence renewal.
 - (b) Just Energy has good compliance standing, characterized by openness and transparency with the Board and proactive management of, and quick and effective response to, customer issues.
 - (c) The concerns expressed in the Staff Submission are thus responded to.
 - (d) It would be unfair for the Board to apply to this Application, at this late stage of the matter, a further process under the new requirements set out by the just released updated forms.
 - (e) Board Staff has offered no specifics regarding the information that it would seek through an interrogatory process, nor regarding how such information would assist the Board in determining this application for retail gas marketer licence renewal. It would be unfair to extend this process without good cause and in departure from the Board's past practice and the Applicant's reasonable expectations in reliance thereon. In any event, as it happens, this Response has

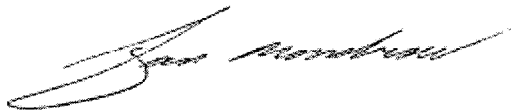
¹³ Paragraph 6, above.

provided much of the additional information contemplated by the just released updated gas marketer licence application forms.

55. The Applicant submits that the record herein is complete and in accord with the Board's retail licencing process applicable at the time of filing of this Application, and respectfully requests, based thereon, that this Application for retail gas marketer licence renewal be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Macleod Dixon LLP, per:



Ian A. Mondrow
Counsel for Universal Energy Corporation/Just Energy

December 8, 2009.

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APPLICATION FOR RENEWAL OF GAS MARKETER LICENCE GM-2004-0537

Attachment 1 to the Response of Universal Energy Corporation/Just Energy

From: Sami Amer <land3s@yahoo.com>
To: Boardsec@oeb.gov.on.ca <Boardsec@oeb.gov.on.ca>
Cc: Nola Ruzycski
Sent: Mon Nov 30 08:24:36 2009
Subject: File Number: EB-2009-0364
Dear Borad members,

I strongly object to a written hearing for granting gas marketer license for Universal Energy Number: GM-2004-0537.

Please see attached a letter for my reasons.

Sami Amer
10 Wimbledon Way
Kanata ON, K2K 3J2

Sami Amer
10 Wimbledon Way
Kanata, ON, K2K 3J2

November 30th, 2009

Dear Ms. Nola Ruzycki,

CANCELLATION OF CONTRACTS NUMBER 13188791 OF ELECTRICITY AND GAS

On September 12, 2008, I signed a contract in my home to buy power and gas on a 5 year term from your representative **Felix Dick** agent number: **30120113** at a price of 38.9 cents/m³ (gas) and 8.49 cents/KWh (electricity).

I am a new immigrant who arrived in Ontario barely 3 weeks before a representative of Universal Energy came knocking on my door, touting the benefits or “rate protection” and “deregulation of energy”, provided by your company.

He never represented himself as a salesperson of any kind. Instead, he presented himself as a consumer advocate working for the provincial government, saying that they were out to help the average consumer save money and protect their energy costs in the face of a deregulated market. He promised a fixed rate for gas and electricity for 5 years, which is **SUPPOSED** to save me money, as energy costs are going to go up.

He said all this is done while remaining with my utility company, but my energy “supplier” is Universal. My energy “provider” is my local utility. The truth is, however, that in the past 11 months, I have paid in excess of \$800 **MORE** for our hydro and gas bills than we would have had if we stayed with our local utility companies and their fluctuating rates. This is not a consumer protection (as claimed by your representative); the fixed price is almost double the price of my local utility. Your representative and your customer service people, when asked, also told me that there would be no adverse effects should I want to cancel my contract. No penalties were mentioned

I find it frustrating that I couldn't reach anybody beyond your customer service. Somebody who would explain why I should pay the astronomical cancellation penalties when I was clearly given the wrong information and was misled into signing the 5 year contract. I urge you to listen to the recording of my verbal exchange when your representative called me during the first 10 days after signing the contract.

According to the better business bureau, see section 18(1):

18. (1) Any agreement, whether written, oral or implied, entered into by a consumer after or while a person has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law, including damages. Sched. A, s. 18 (1).

This means that I am allowed to "cancel" or rescind my agreement with you for misrepresentation of your services of price protection and misrepresentation of information regarding cancellation penalties. It also means that I am entitled to receive damages incurred for not meeting your promise of price reduction.

Today, I hereby exercise my right to cancel the contract for both Enbridge gas and Hydro and ask that the overcharged money be refunded to me and the service discontinued.

I look forward to your immediate reply. You can contact me at my home phone number **(613) 595 0627** or by email at **Land3s@yahoo.com**.

I would like you to treat this as an urgent matter. Failing to do so, I will have to proceed with the following remedies:

- Lodging a formal complaint with Ontario Energy Board about your shady business practices.
- Reporting your fraudulent practices to the Provincial Law Enforcement Agencies as well as to the regulators of private commercial organizations such as yours.
- Giving the "Green Light" for my story to appear in the Ellen Roseman's column in The Star's business section and Money911.
- Writing to the Ontario Office of The Premier.

Yours truly,

Sami Amer
10 Wimbledon Way,
Kanata ON, K2K 3J2

APPLICATION FOR RENEWAL OF GAS MARKETER LICENCE GM-2004-0537

Attachment 2 to the Response of Universal Energy Corporation/Just Energy

Hydro provider's bill gives customer a jolt

BY HUGH ADAMI, THE OTTAWA CITIZEN DECEMBER 2, 2009

The guy at the door convinced Lynne Cournoyer she would be getting a pretty good deal in the long run by having Universal Energy Corporation be her hydro provider for the next five years.

A single mother and an elementary school teacher, Cournoyer says money is tight and she often does without to make sure she can afford things for her two children, both of whom have cystic fibrosis and, as a result, have special needs.

The offer from Universal made sense, especially with the constant dire warnings about energy costs. Why risk the chance of rising hydro bills when she could pay a fixed rate that would initially cost her more, but protect her in the long run if electricity rates go through the roof?

Well, the switch did not come as advertised. Last month, Cournoyer found out she was suddenly paying a lot more for electricity for her Kanata home. Her first bill covering a two-month period was for \$160 more than her previous one with Hydro Ottawa. She had expected a bill of about \$260, about \$40 more than she normally pays. Instead it was closer to \$380.

"I do everything (to watch my money), so I often find myself thinking, 'I can't afford to do this, I can't afford to do that,'" Cournoyer says. "I get this (bill) and it's like a kick in the pants."

To make matters worse, Universal, which receives an "F" grade from the Better Business Bureau, refused to cancel the contract unless she paid the company a penalty of about \$660. When she argued she had been misled by the agent, she was told she should have read the contract carefully.

As it turns out, Cournoyer is one of many Universal customers who feel they have been misled. Of 269 complaints filed against Universal's Toronto office as of Tuesday, 103 concerned sales practices and 109 were about contract issues. Universal, part of the Just Energy Group of Companies, is also a natural-gas provider.

The Ontario Energy Board, which regulates the industry, has fined Universal on two occasions this year. Last January, Universal was fined \$127,500 for "non-compliant practices," which included false and misleading statements to consumers. As a result, some contracts were cancelled and money refunded to customers. Universal also agreed to conduct quality-assurance audits and report any disciplinary measures taken against its sales agents as a result of the audits.

In May, the company was fined another \$60,000, again for three non-compliance complaints. Two of the three complaints involved false and misleading statements.

What the agent at Cournoyer's front door didn't tell her is that Universal's rate per kilowatt hour does not include the "provincial benefit" -- money that goes to the Ontario government. The provincial benefit fee -- listed at 3.3 cents per kilowatt hour on Monday -- is rolled into the lower regulated power rates Hydro Ottawa and other local utilities charge their customers. So customers don't see the actual provincial benefit charge on their bills. Private energy providers charge the benefit separately from their higher contracted rates.

So, when she was told she would be paying Universal 7.9 cents per kilowatt hour, or about two cents more than she was used to, the sales agent didn't mention the provincial benefit -- \$81.28 in her first bill with her new provider -- was on top of the rate increase.

The benefit was actually once a credit on hydro bills because the market price of electricity was higher than regulated or contract prices, but that isn't going to change anytime soon.

Lynne's father, Romeo Cournoyer, recalls his daughter "bawling her eyes out" when she phoned to tell him that switching to Universal was a costly mistake that she couldn't afford.

They got nowhere with Universal's Toronto office, which told them too much time had passed to void the contract. Cournoyer could have cancelled the contract within 10 days of signing it last summer, no questions asked.

After the 10-day period passed, Cournoyer theoretically had another 50 days to get out of it. Under Ontario Energy Board regulations, the company is to call new customers to affirm that there are no misgivings. If there are, the customer can opt out. The board also requires that the phone calls be recorded.

Cournoyer says she was never called, and, by the time she received her first bill, dated Oct. 16, it was early November. It had been more than 60 days since she had signed the contract.

Fortunately, The Public Citizen had much better luck in dealing with Universal on Cournoyer's behalf.

After I explained Cournoyer's predicament to Gord Potter, the company's vice-president of regulatory and legal affairs, he promised to cancel the contract. He says Universal actually gives residential customers the chance to opt out of contracts 30 days after they receive their first bills.

"In this particular customer's case, she should be within her cancellation (deadline) and I'm happy to put that through," Potter said.

Cournoyer said Tuesday that Potter also promised to see if he could reduce the bill by \$160 so it would be in line with what she would have paid Hydro Ottawa.

Is something bothering you where you live, work or play? We'd like to know.

Please contact thepubliccitizen@thecitizen.canwest.com

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