



ONTARIO ENERGY BOARD

BOARD STAFF FINAL SUBMISSION

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

EB-2009-0364

February 12, 2010

INTRODUCTION

Universal Energy Corporation (“Universal”) filed an application dated October 9, 2009, with the Ontario Energy Board (the “Board”) under section 60 of the *Ontario Energy Board Act, 1998* (the “Act”) for a renewal of its gas marketer licence.

The Board issued a Notice of Application and Hearing on November 17, 2009 calling for submissions from interested parties to be filed by December 2, 2009 (the “first submissions”) and any response by the applicant to be filed by December 9, 2009. A customer of Universal filed a letter of comment on November 30, 2009, objecting to a written hearing process. Board staff filed a submission on December 2, 2009 seeking the inclusion of an interrogatory process for this application. The applicant filed a response to the letter and Board staff’s submission on December 9, 2009.

On December 18, 2009, the Board issued Procedural Order No. 1 providing for an interrogatory process in order to gather additional information that is relevant to the Board’s consideration of the application. On February 4, 2010 the Board issued Procedural Order No. 2 providing for a final submissions phase.

This submission is being provided by Board staff following a review of the application and evidence filed in this proceeding.

THE APPLICATION

According to the application, Universal presently has approximately 70,000 gas contracts that were signed prior to July 1, 2009. Universal has stated that it is not presently marketing to new customers and in response to Board Staff Interrogatory #5(b) confirms that it has no current plans to market new contracts under the Universal licence. However, as stated in paragraph 13 of its first submission, Universal requires the renewal of its licence in order to serve customers under its existing gas contracts.

On July 1, 2009, all of the issued and outstanding shares of Universal were indirectly acquired by Just Energy Income Fund (“Just Energy”). The applicant stated at paragraph 19 of its first submission that Just Energy’s management team has assumed full management of, and responsibility for, Universal, and none of Universal’s previous management team are involved with the Universal business within Just Energy. The applicant has qualified its statement by noting that a few of Universal’s previous senior

personnel are involved with National Home Services, which is a water heater rental company within the Just Energy group.

In paragraph 25 of the submission, the applicant further stated that Just Energy is serving Universal's existing customers through Just Energy staff and processes, including contract management and compliance processes. The applicant has also confirmed in response to Board Staff Interrogatory #6(a) that "none of Universal's employees responsible for sales have transitioned to Just Energy or remained in Universal's employ."

STAFF SUBMISSION

In Board staff's first submission on this application, Board staff expressed concern regarding Universal's past conduct. As noted in the first submission, the Board published a Notice of Intention to Make an Order for an Administrative Penalty on two occasions – December 22, 2008 and April 23, 2009. The Notices indicated a series of infractions which included making false, misleading or deceptive statements to consumers and switching a customer's supply without the customer's explicit authorization. The Board released Orders with respect to each Notice on January 20, 2009 and April 24, 2009. In each Order, the Board ordered Universal to pay an administrative penalty with respect to the contraventions noted in each Notice.

Board staff observes that the number of complaints relating to Universal's gas contracts is high. The information provided in response to Board Staff Interrogatory #2(c) shows that in the 4th quarter of 2009 there were 73 complaints relating to Universal's gas contracts whereas Just Energy Ontario L.P. had 8 complaints. This is the case even though Universal has not been marketing to new customers since July 2009 and Just Energy assumed management and operational responsibility for Universal's customer contracts since acquiring Universal in July 2009. Board staff also notes that the applicant and associated entities have been subject to penalties, fines, and voluntary payments resulting from investigations by regulatory bodies in Michigan, New York and Illinois in the past two years. Universal's response to Board Staff Interrogatory #2(a) states that the primary catalyst for the investigation by the Michigan Public Utilities Commission was the number of complaints received by the Commission related to the marketing practices of Universal Gas and Electric Corporation and were primarily attributed to agent conduct.

Maintaining public confidence in the retail energy market is important to the Board as gas marketers do business directly with consumers. The Board monitors compliance by regulated companies to their statutory and regulatory obligations. Compliance by gas marketers with the Act and the respective regulations and code of conduct is therefore critical. The Board's oversight is further emphasized by the statement in Procedural Order No. 1 that the Board exercises an important supervisory role over gas marketers through its licensing regime.

In light of the two enforcement actions taken by this Board, the imposition of penalties, fines and stipulated processes for marketing by three other regulators in the U.S.A, as well as the high level of complaints in Ontario in 2009, Board staff submits that the Board consider the following in its decision to renew the licence of Universal:

1. 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.
2. Require the applicant to notify the Board at the time it intends to resume marketing and provide information on the type of marketing it intends to engage in as well as confirmation that the requisite training of its sales representatives has been undertaken.
3. Require the applicant to 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.
4. 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.

All of which is respectfully submitted.