

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

Final Reply Submission of Universal Energy Corporation

Introduction

1. In Final Submissions herein dated February 12, 2009, Board Staff has recommended four conditions for inclusion in Universal Energy Corporation's (UEC) renewed Gas Marketer Licence. These four conditions are recommended by Staff "*in light of 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., and the high level of complaints in Ontario in 2009*".
2. UEC does not object to two of the conditions proposed by Board Staff. These two conditions are:
 - (a) That UEC 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.
 - (b) That UEC immediately notify the Board of the transfer or hiring, directly or indirectly, of any of Universal's previous management team.
3. UEC does, however, object to the other two conditions proposed by Board Staff.
4. The two enforcement actions taken by this Board, the imposition of penalties, fines and stipulated processes for marketing by U.S. regulators, and the Ontario complaints in 2009 that staff cites as concerns in support of its proposal for conditions, were all driven by UEC's historical agent conduct issues. UEC management has now changed, and UEC is

no longer marketing to new gas customers in Ontario. Agent conduct is thus not an issue now or in the foreseeable future.

5. The two objectionable conditions, formulated to address concerns that are now moot, are either administratively difficult, or effectively impossible, to meet.
6. In particular, and as elaborated on below:
 - (a) The first of the objectionable proposed conditions - related to future reporting by the applicant - would entail significant administrative burden for UEC with no commensurate value to the Board or the public.
 - (b) The second of the objectionable proposed conditions - which effectively contemplates continued licencing only if customer complaints are reduced to a maximum of 10 per quarter - is effectively impossible for UEC, or any marketer or retailer, to meet.

Relevant Facts

7. UEC's October 9, 2009 Application and December 8, 2009 submissions herein set out a factual base for this application, which UEC adopts for the purposes of these Final Reply Submissions. In particular, the following facts, as more completely set out in UEC's earlier submissions, are most relevant to consideration of Staff's proposed conditions for inclusion in UEC's renewed Gas Marketer Licence:
 - (a) 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.
 - (b) Just Energy is licenced by the Ontario Energy 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.
 - (c) As of the July 2009 acquisition of UEC by Just Energy, all UEC customer accounts are being managed by Just Energy personnel, under Just Energy processes. 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.¹ UEC is now subject to Just Energy's Ontario retail energy operations, including Just Energy's contract management processes and compliance systems.

- (d) Since the alleged forgeries that preceded the Administrative Penalty issued against Ontario Energy Savings more than 6 years ago, Just Energy's compliance standing with this Board has been characterized by openness, transparency and proactive management of, and quick and effective response to, customer issues.
- (e) 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. Just Energy responds promptly to customer complaints through a robust complaint response process.
- (f) While UEC is not currently marketing to new gas customers in Ontario, and has no current plans to resume marketing to new gas customers, it has approximately 70,000 existing gas supply under which it currently flows approximately 200 Bcf of gas per year.

Conditions Proposed for Inclusion

- 8. As noted at the outset of these submissions, UEC does not object to two of the conditions proposed by Board Staff for inclusion UEC's renewed Gas Marketer Licence. These two conditions are:
 - (a) That UEC 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.
 - (b) That UEC immediately notify the Board of the transfer or hiring, directly or indirectly, of any of Universal's previous management team.
- 9. For clarity, UEC interprets, and proposes to implement, the second of these two proposed conditions as requiring notification to the Board in the case of transfer to, or hiring or retainer in a consulting or contract role by, the licensee of any individual who was

¹ In the interest of complete disclosure, as noted in UEC's December 8, 2009 submissions, we note 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.

employed or retained by UEC in the capacity of a vice president or equivalent role, or a more senior role, during or prior to July 2009.

10. UEC does, however, object to the other two conditions proposed by Board Staff.
11. The first condition which UEC objects to is proposed by Staff 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.

12. The reporting suggested by staff would entail time intensive manual procedures. 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. In the result, a significant amount of manual work would be required to provide the detailed reporting that Board Staff suggests.
13. The applicant has gone through a similar exercise to the one proposed by Board Staff in Michigan, pursuant to the settlement reached with the Michigan Public Service Commission (MPSC) as referenced in UEC's response to Board Staff interrogatory #2 herein. (Indeed, given the similarity of Staff's recommendation with the existing MPSC settlement, it appears that OEB Staff's recommendation is based on the MPSC settlement order.)
14. The MPSC reporting has proven difficult to implement. There is one more quarterly report to complete under the MPSC order.

15. Despite the difficulty in providing the reports required by the MPUC, Just Energy agreed to such provision, in resolution of the MPSC's investigation, as there was arguably some value to such reporting in Michigan. This is because in Michigan:

- (a) UEC's affiliate (Universal Gas and Electric Corporation) continues to actively market. There is thus some logic for the MPSC's desire to monitor the sales agent conduct issues that have characterized the complaint history of the Universal companies in Michigan, as they have in Ontario and elsewhere.
- (b) The MPSC has no other formal complaint tracking protocols or consumer complaint reporting and publication framework in place.

16. In sharp contrast, in Ontario:

- (a) The OEB already has a well developed and proactive consumer complaint tracking, reporting and publication framework in place, to which UEC is subject in any event. Under this framework:
 - (i) All energy retailer customer complaints received by the Board are relayed to the subject retailer through the Board's complaint portal.
 - (ii) These complaints are categorized by OEB Staff as "contract management", "customer service" or "agent conduct" complaints and their numbers are tracked.
 - (iii) Energy retailers receiving such complaints are required to provide a full report back to the Board, in prescribed form, of the details of the complaint, its resolution, and broader actions identified by the retailer as appropriate in response to the complaint and others like it.
 - (iv) The OEB publishes retail compliance reports, and posts complaint data, by category, on its website. This reporting is readily accessible by energy consumers.
- (b) UEC does not currently intend to actively market under the UEC gas marketer licence. Rather, the renewal of this licence is sought in order to allow UEC to continue to fulfill its obligations under existing customer supply contracts.
- (c) Given that UEC has not been marketing to new gas customers since July, 2009, and has no current plans to resume, marketing gas in Ontario, the historical problems of UEC which have centered around agent conduct issues are irrelevant to current and prospective monitoring of UEC by the OEB.

17. In the result, the reporting suggested by Staff as a condition for renewal of UEC's licence, and apparently fashioned on a compliance settlement reached in an entirely and dramatically different commercial and regulatory context, would be:
- (a) Redundant to the current reporting and publication regime already in place for all energy retailers in Ontario, including UEC. Under the current reporting and publication regime, both the OEB and Ontario's energy consumers already receive updated information on the types and volume of complaints received by the Board from UEC's customers.
 - (b) Costly and difficult for UEC/Just Energy to implement.
 - (c) Of no current or currently anticipated value to Ontario energy consumer protection, given that UEC's historical issues have centred around sales agent conduct, and such sales have ceased and there is no intention to re-commence them.
18. That Staff's suggested reporting condition is, with respect, ill suited to the Ontario energy retailing regulatory context is illustrated by particular reference to the last component of this proposed condition; the suggestion that the additional reporting be "*publicly accessible*".
19. There are already publicly accessible consumer complaint reports available through the Board's website, which include all active licenced energy retailers. To require additional public disclosures by one such retailer would add little to the ability of Ontario's energy consumers to educate themselves regarding energy retailers. On the other hand, such incremental reporting could result in an undue (as not necessarily indicative of relative complaint experience, but rather of extra reporting requirements) competitive disadvantage to UEC.
20. The Board, in consultation with affected energy retailers, took great care in establishing its public retailer complaint reporting protocol, in order to ensure that retailer complaint history was presented on a fair and consistent basis, but with due regard to competitively sensitive information. With respect, the decision maker on this application should be extremely reticent to interfere with that carefully crafted protocol. This is particularly so where there would be no incremental value to the proposed incremental reporting.

21. In summary in respect of Staff's reporting proposal, UEC respectfully submits that:
- (a) Staff's reporting proposal is apparently derived from a regulatory settlement in place in another jurisdiction, in response to a fundamentally different commercial and energy consumer protection and reporting regime than the one already in place in Ontario.
 - (b) The settlement from which this proposal is apparently derived has proven to be expensive and difficult to implement (and is drawing to a close).
 - (c) The reporting proposal would provide no incremental consumer protection, considering the Board's existing complaint handling and (carefully crafted) public reporting framework. At the same time, UEC's historical agent conduct issues are irrelevant going forward as UEC is no longer marketing to new gas customers under the subject licence.
 - (d) The reporting envisioned by the proposal would be effectively redundant to the proactive energy consumer complaint and public complaint history reporting framework already in place in Ontario, while adding material administrative burden to, and posing potential undue competitive disadvantage to, UEC. The Board should guard against imposing reporting requirements that provide no significant incremental value to the Board or Ontario's energy consumers.
22. The second condition for UEC's renewed Gas Marketer Licence to which UEC objects is proposed by Staff as follows:
- Licencing 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.*
23. UEC has two basic concerns with this proposal.
24. First, many of the existing UEC gas supply contracts in respect of which this licence renewal is required run for more than two years. Limiting UEC's gas marketer licence renewal to two years presents a significant degree of commercial uncertainty in respect of these gas supply arrangements, for both UEC and UEC's customers.
25. Second, and more fundamentally, Staff's proposed conditional metric represents an annualized customer complaint frequency, based on the current UEC gas customer base,

of less than six one hundredths of a percent ($40/70,000 \times 100$). Even assuming attrition of the current 70,000 UEC gas customer base by 50% two years from now, the complaint frequency would still represent an annualized complaint frequency of one tenth of one percent. There is no energy retailer in Ontario, and in all likelihood no retailer of any good or service, whose complaint experience can meet this metric. This is, with respect, a completely unrealistic expectation.

26. This proposed customer complaint metric would unduly handicap UEC in particular given that UEC's current management was not responsible for agent conduct issues that will give rise to customer complaints yet to be received. All such complaints coming forward will be driven by events that occurred prior to Just Energy acquiring UEC and integrating UEC's customers into Just Energy's customer management practices. UEC is not, and does not currently plan to, engage in any marketing of new customers under the renewed licence. In the result, UEC in its current form can have no control over most if not all of the ongoing complaint experience of UEC.
27. UEC understands the Board's renewed emphasis on energy consumer protection and retailer compliance. Just Energy has participated openly and proactively in support of this emphasis. However, this second objectionable condition proposed by Board Staff is commercially counterproductive and simply unrealistic.
28. In any event, and should anything change, the Board always retains jurisdiction to investigate and, as warranted, suspend or cancel an energy retail licence if there is sufficient cause to do so. UEC submits that there is no reason for it to be held to a higher standard of conduct than is realistically achievable by it, and by the balance of Ontario's energy retailers. In light of the Board's ongoing discretion to address problematic energy retailer conduct as and when it may occur, such a ruling would be arbitrary and capricious.
29. Just Energy/UEC management will continue to meet monthly with Board staff as they do currently to review and address consumer enquiries and complaints as received.

Trade Names

30. In response to question 5 of the Licence 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.
31. UEC clarified in its December 8, 2009 submissions herein that while UEC 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, the applicant requests that the Board include these two trade names in the licence renewal requested herein.

Conclusion

32. As gas is currently flowing under UEC's 70,000 existing contracts, renewal of the licence that is the subject of this Application is required. UEC does not understand Board Staff to be objecting to such renewal.
33. In respect of the conditions proposed by Board Staff for inclusion in UEC's renewed gas marketer licence, UEC does not object to the second and third of those proposed conditions (addressed at paragraph 2 of these submissions). UEC does, however, object to the first and fourth of these proposed conditions (for the reasons set out at paragraphs 8 through 29 of these submissions).
34. While UEC appreciates Board Staff's intention to facilitate effective oversight by the Board of regulated energy retailers in the interests of energy consumer protection, UEC has argued that the two objectionable proposed conditions are both onerous and either redundant to existing OEB practices or of limited value in furtherance of the stated intention behind those proposed conditions.

35. UEC thus requests that the Board grant a full term renewal of UEC's gas marketer licence, without imposition of additional reporting requirements or customer complaint metric conditions for continuation of the renewed licence.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Macleod Dixon LLP, per:



Ian A. Mondrow

Counsel for Universal Energy Corporation/Just Energy

February 22, 2009.

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