



ONTARIO ENERGY BOARD

BOARD STAFF SUBMISSION ON CONFIDENTIALITY REQUEST FOR INTERROGATORY RESPONSES

APPLICATION FOR RENEWAL OF A
ELECTRICITY RETAILER LICENCE
BY
UNIVERSAL ENERGY CORPORATION

EB-2010-0034

April 28, 2010

BACKGROUND

Universal Energy Corporation (“Universal”) filed an application dated February 9, 2010 with the Ontario Energy Board (the “Board”) under section 60 of the *Ontario Energy Board Act, 1998* for a renewal of its electricity retailer licence. The Board provided for an interrogatory and submission process in order to gather additional information that is relevant to the Board’s consideration of the application.

On April 5, 2010, Board staff filed interrogatories. Universal filed responses to Board staff interrogatories on April 19, 2010 and at the same time requested that particular interrogatory responses be treated as confidential. Specifically, Universal is requesting that responses to interrogatories 1, 2, 3, 4, 6, 7, 9, 10, 11 and 12 be treated as confidential.

Board staff objects to Universal’s confidentiality request for all or part of interrogatory responses to questions 4, 6, 7, 9, 10, 11 and 12.

STAFF SUBMISSION

Board staff has reviewed each of the interrogatory responses and objects to the confidentiality request for the following reasons.

- 1. Board Staff Interrogatory #4 - Universal was acquired by Just Energy Income Fund in July 2009. The Board asks that all consumers who contact the Board to make a complaint about a retailer or marketer to first contact their retailer or marketer before registering a complaint with the Board. Of the complaints listed in response to IR #2 please indicate for each quarter the number of complaints where the customer had contacted Universal/Just Energy to resolve the complaint before the customer registered a complaint with the Board. If Universal/Just Energy does not have this information available please provide an explanation.**

Board staff submits that Universal’s response does not provide the information sought by the interrogatory; it merely provides an explanation for being unable to provide the requested information. Universal has not demonstrated how or why the disclosure of this response will result in prejudice, which is the basis for its claim of confidentiality.

2. **Board Staff Interrogatory #6 - On January 20, 2009, Universal entered into an Assurance of Voluntary Compliance with the Board as part of the EB-2009-0005 proceeding. The conditions set out in the Assurance were made effective for a period of 18 months from the date of the Assurance and are due to expire on July 20, 2010. Please advise if Universal intends to continue to undertake any verifiable quality assurance measures in its contract management processes. If so, please provide details.**

It is Board staff's view that the response does not provide the information requested, i.e. to provide the Board with information on any planned quality assurance measures in its contract management process going beyond the Assurance of Voluntary Compliance entered into as part of the EB-2009-0005 proceeding. Further, Board staff submits that the information provided by Universal in this interrogatory response does not warrant confidential treatment as it is already part of the public record in the EB-2009-0005 proceeding.

3. **Board Staff Interrogatory #7 - Please explain what particular improvements in customer management systems or procedures Universal or Just Energy has undertaken – e.g. re-training of sales representatives and sales supervisors, system upgrades, etc. since compliance orders were issued against Universal in 2009. Please confirm whether Universal's or Just Energy's compensation structure is the same as indicated in the response to Board Staff Interrogatory #6(c) in Universal's gas marketer licence renewal application [EB-2009-0364].**

The majority of the information provided in Universal's response relates to particular improvements in customer management or procedures undertaken by Universal. Board staff submits that Universal has not demonstrated how or why the disclosure of this information will result in prejudice. This information is pertinent to the Board's assessment of Universal's technical/operations capability and its conduct with respect to consumers.

Universal has not demonstrated why confidential treatment is warranted and further, it is Board staff's submission that Universal has not made any effort to limit the scope of its request for confidentiality commensurate with the alleged commercial sensitivity of the information at issue.

With respect to that part of the interrogatory requesting confirmation of Universal's compensation structure, Board staff submits that Universal's comments should not be treated as confidential for two reasons. First, no details of Universal's compensation structure are provided. Second, Universal has filed information on its compensation structure in the EB-2009-0364 proceeding and as such it is already in the public domain.

For the reasons provided above, the claim for confidentiality should be rejected.

4. **Board Staff Interrogatory #9 - Have Universal's electricity contracts been transferred to Just Energy? If so, please advise:**
- a. **on the number of contracts that were transferred; and**
 - b. **if Universal has undertaken the notifications as required by Sections 6.2 and 6.3 of the Electricity Retailer Code of Conduct.**

Board staff objects to the request for confidential treatment of the response to 9 b. as these notifications are Code requirements.

5. **Board Staff Interrogatory #10 - If some or all the contracts have been assumed by Just Energy and there is no intention to market under the Universal licence, please explain why Universal is seeking to renew its retailer licence.**

Board staff submits that Universal has not satisfied the onus of establishing that disclosure of this information will result in prejudice. Universal has already stated in its application that it has no plans to market under the Universal licence at this time.

The claim for confidentiality should be rejected.

6. **Board Staff Interrogatory #11- Has Universal integrated its customer records for its electricity retail customers into Just Energy's customer management system? If not, please explain how these are being managed and what, if any, impact this has on Universal/Just Energy's ability to respond to customer complaints.**

The information provided by Universal's response relates to changes in customer management. Board staff submits that Universal has not demonstrated how or why the disclosure of this information will result in prejudice. Board staff considers that,

as in 7. above, this information is pertinent to the Board's assessment of Universal's technical capability and its conduct with respect to consumers.

Universal has not demonstrated why confidential treatment is warranted nor has it limited the scope of its request for confidentiality commensurate with the commercial sensitivity of the information at issue.

Board staff submits that the Board should not accord confidentiality protection to this information.

- 7. Board Staff Interrogatory #12 - In sections 7(a) and 11(c) of its application, Universal has listed National Energy Corporation as an affiliate. Please provide the following information:**
- a) a description of all the current business activities of the affiliate and its subsidiaries, if any;**
 - b) the total number of existing gas and electricity customer contracts for this affiliate;**
 - c) the total number of complaints received by the affiliate and its subsidiaries per quarter over the last 24 months for all business activities conducted by the affiliate and its subsidiaries, broken down by the nature of the complaint as defined in Interrogatory No. 2.**
 - d) whether Universal and National Energy Corporation share any officers, directors, key individuals or other staff? If yes, please explain the roles of the shared staff for each company.**

National Energy Corporation is licensed by the Board as a gas marketer and electricity retailer. The information requested in relation to the licensed activities in parts a., b., and c. is therefore relevant and can be required by the Board under section 8.1 of the licence. Board staff submits that Universal has not demonstrated how or why disclosure of these responses will result in prejudice.

Board staff further submits that the response provided to part c. of the interrogatory relating to any of National Energy Corporation's non-OEB licensed activities does not warrant confidential treatment as no information pertaining to these activities has been provided. Finally, the information on officers, directors and key individuals provided in part d. of the response is already publicly available. The Board should reject the request for confidentiality.

CONCLUSION

Board staff submits that the onus is on Universal to justify a claim for confidentiality.

Section 5 of the Board's *Practice Direction on Confidential Filings* states:

“The onus is on the person requesting confidential treatment to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case. It is also the expectation of the Board that parties will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue or with any legislative obligations of confidentiality or non disclosure, and to prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record. This will provide parties with a fair opportunity to present their cases and permit the Board to provide meaningful and well-documented reasons for its decisions.”

In Board staff's view, Universal's confidentiality request for the interrogatory responses noted above does not meet the requirements as set out in the Board's *Practice Direction on Confidential Filings*. Board staff submits that, unless Universal can clearly demonstrate how and why the disclosure of the information provided will cause prejudice, the confidentiality requests for the interrogatory responses as noted in this submission, should be denied.

All of which is respectfully submitted.