



EB-2010-0034

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

AND IN THE MATTER OF an application by
Universal Energy Corporation for an Electricity
Retailer licence.

By delegation, before: Jennifer Lea

DECISION ON A REQUEST THAT CERTAIN INFORMATION BE HELD IN CONFIDENCE

Background

Universal Energy Corporation ("Universal") filed an application for renewal of its electricity retailer licence on February 9, 2010. The procedural order in the application provided for written interrogatories on the application. Board staff, on March 31, 2010, asked thirteen questions of the applicant.

By letter dated April 19, 2010, Just Energy, the company that now owns Universal, asked that the answers to Board staff interrogatories 1, 2, 3, 4, 6, 7, 9, 11 and 12 be held confidential. The reason cited for the request was that the information in those answers was proprietary in nature. Just Energy stated that the information related to specific customer numbers, or specific process and system related information that was not to be shared outside the Just Energy organization, particularly with competitors. Just Energy did not cite any specific harm that would result from disclosure of the information.

Board staff, in a submission on the confidentiality issue, opposed the request for confidentiality for the answers to questions 4, 6, 7, 9, 10, 11 and 12. Responding to the Board staff submission in a letter dated April 29, 2010, Just Energy stated:

Just Energy has reviewed Board staff's submission related to the confidentiality request for the interrogatory responses in the [above] renewal application. Although Just Energy still finds the information contained in many of the responses to be sensitive and competitive in nature, we have no further rebuttals with regards to the submission. We would respectfully request confirmation that the confidentiality request related to interrogatory questions 1, 2, 3 and 9(a) will be granted.

In considering the request for confidentiality, I have reviewed the Board's Practice Direction on Confidential Filings, the exceptions to disclosure listed in the Freedom of Information and Protection of Privacy Act, and the Board's form for an Application for an Electricity Retailer Licence, for guidance in assessing the degree of confidentiality that should be accorded the interrogatory responses of the applicant. The Board's policy with regard to confidential filings in applications is stated on page 2 of the Practice Direction:

The Board's general policy is that all records should be open for inspection by any person. This reflects the Board's view that its proceedings should be open, transparent, and accessible.... That being said, the Board relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed, and recognizes that some of that information may be of a confidential nature and should be protected as such.

This Practice Direction seeks to strike a balance between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential. The approach that underlies this Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.

The Board's application form for an electricity retailer application states that information provided in response to the requirements of sections 10 through 15 will be maintained in confidence. The treatment of such information appears to be an exception to the general rule of public disclosure of application materials.

Board Findings

I find that the answers to interrogatories 1, 2, 3, and 9(a) will be held in confidence. The information provided in these responses is similar to that required by sections 10 and 14 of the application form, and on that basis I find that these interrogatory responses will be held in confidence.

The response to interrogatory 4 does not provide information, but explains why the requested information cannot be provided. This response will not be held in confidence. The information provided in answer to interrogatory 6 is similar to information already on the public record, either in section 9 of the licence application, or on the record of EB-2009-0005, and will therefore not be held in confidence.

The information dealing with Universal's affiliate is either on the public record in the licence application of that affiliate, or obtainable by the Board from the affiliate under the terms of the affiliate's licence.

With respect to the remainder of the responses, Universal has not cited any specific prejudice to their competitive position, or their contractual activity, that will result from the disclosure of the information. The responses do not reveal information regarding specific contracts, nor do they reveal customer-specific details. The information regarding Universal and Just Energy's customer contract management and customer complaint tracking systems is sufficiently general that I find no significant prejudice is likely to result from the disclosure of this information. I note that Universal has the option to request that information for which confidential treatment has been denied be withdrawn from the record of the application, in accordance with section 5.1.12 of the Practice Direction. However, information that is withdrawn will not be considered in rendering a decision on the application.

Universal is directed to prepare and submit a revised filing of its interrogatory responses, in which the answers which have been found in this decision to be confidential are redacted. This version will be placed on the public record. The interrogatory answers already provided, which contain the information I have found to be confidential, will be held in confidence. The Board staff submission on confidentiality dated April 28, 2010, may be placed on the public record, as it does not disclose any information that has been found in this decision to be confidential. However, the Board staff submission on the application, dated May 3, 2010 does refer to confidential

information. Board staff is directed to prepare and file a version of this submission which redacts any information found in this decision to be confidential.

DATED at Toronto, May 21, 2010

ONTARIO ENERGY BOARD

Original Signed By

Jennifer Lea
Counsel, Special Projects