



**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 AND ORDER**

### **Background**

Universal Energy Corporation ("Universal") filed an application dated February 9, 2010 with the Ontario Energy Board under section 60 of the *Ontario Energy Board Act, 1998* ("the Act") for an electricity retailer licence.

The Board issued a Notice of Application and Hearing on March 3, 2010. On March 23, 2010, the Board issued Procedural Order No.1 providing for an interrogatory and submission process in order to gather additional information that is relevant to the Board's consideration of the application.

Board staff filed interrogatories on April 5, 2010. Universal filed responses to Board staff interrogatories on April 19, 2010 and requested that interrogatory responses to Board Staff Interrogatories 1, 2, 3, 4, 6, 7, 9, 11 and 12 be treated as confidential. Board staff filed a submission on April 28, 2010 objecting to the confidentiality request for all interrogatory responses except for 1, 2, 3, and 9(a). On April 29, 2010, Universal responded to Board staff's submission limiting its confidentiality request to responses provided to Board Staff Interrogatories 1, 2, 3, and 9(a).

In its decision on the confidentiality request issued on May 21, 2010, the Board stated that responses to Board Staff Interrogatories 1, 2, 3, and 9(a) will be held in confidence. As per the Board's direction, Universal has filed a redacted version of its responses and Board staff has also filed a redacted version of its submission on the application. Universal did not file a final submission on the main application.

## Issues in this Application

The Board considers a number of issues when deciding whether to license an electricity retailer. Key areas that are reviewed include the financial position, technical capability and the conduct of the applicant. In this application, no issues were raised regarding the finances or technical capability of Universal. However, concerns were raised regarding the conduct of the applicant.

Gas marketers and electricity retailers in Ontario are required to comply with the Act, regulations under the Act, and the Board's Codes and Rules that apply to their business. Universal, which holds both gas marketer and electricity retailer licences, was subject to two enforcement orders by the Board issued on January 20, 2009 and April 24, 2009. The orders imposed administrative penalties on Universal for a series of contraventions of enforceable provisions, as defined in the Act, which included making false, misleading or deceptive statements to consumers and switching a customer's gas supply without the customer's written permission. In one proceeding, in addition to paying the administrative penalty, Universal also entered into an Assurance of Voluntary Compliance wherein it undertook to conduct quality assurance audits of all positive reaffirmation calls and report on any disciplinary actions taken against its agents as a result of these audits.

In its submission Board staff proposed that two conditions be imposed on Universal's licence renewal relating to reporting requirements. Staff has also proposed that the licence be issued for a term of two years.

## Board Findings

For the reasons set out below, the electricity retailer licence of Universal will be renewed for two years. The order granting the licence imposes two conditions on the applicant, as described in the reasons that follow.

**Term of the Licence**

As noted earlier, Universal was subject to two administrative penalties levied by this Board. The contraventions were serious as they involved agents of Universal who had made false, misleading or deceptive statements to energy consumers, and in one case, forged the signature of a consumer.

Universal was acquired by Just Energy Income Fund (“Just Energy”) in July of 2009. Universal has stated that it ceased marketing to new customers coincident with the Just Energy acquisition of Universal and confirmed that Universal is not presently marketing to electricity consumers in Ontario. However, Just Energy wishes to maintain the licence in the interest of keeping the option available to market in the future. Universal has also stated that it is in the process of transferring Universal’s electricity contracts to Just Energy and that this process will take months to complete.

It has been less than a year since Just Energy acquired Universal. It would be advantageous for the Board to have before it evidence of the effectiveness of Just Energy’s management of the customer issues acquired with the Universal electricity contracts. That evidence will be available only with the passage of time.

The shorter term of two years will enable the Board to review the status of Universal’s marketing plans when considering a subsequent application for renewal.

**Conditions of the Order granting the Licence**

To deal with potential concerns with marketing practices, the following condition will be imposed by this Order:

- a) Universal must notify the Board if it intends to resume marketing under the authority of this licence, and with that notification, provide the following information:
  - i. the date marketing will commence;
  - ii. a description of all types of marketing that Universal will use; and
  - iii. confirmation that the requisite training of its sales representatives has been undertaken.

The number and nature of customer complaints and the resolution of customer issues by Universal, or by Just Energy on behalf of Universal, are also of concern to the Board. It appears from the interrogatory answers provided by Just Energy that there are some gaps in the recording or classifying of customer complaints. For example, the number of complaints reported by the applicant for two quarters was less than the number of complaints recorded by the Board regarding Universal during the same time period. The complaints recorded by the Board should be a subset of the complaints received by Universal, as the Board requires the customer to contact the entity that is the subject of the complaint.

In addition, review of the application and interrogatory evidence provides no indication of any specific initiatives to identify systemic issues giving rise to complaints. The only information provided relates to the migration of all Universal customer accounts into Just Energy's customer service information system. Since January 2010, complaints regarding Universal's contracts are recorded and managed through Just Energy's customer care complaint tracking system. However, complaints received prior to January 2010 are kept in Universal's compliance system which is not integrated with Just Energy's systems.

I find that quarterly reporting of certain information would be useful in monitoring the success of Just Energy in managing customer issues related to the Universal electricity contracts, and should be required.

- b) Universal (or Just Energy on behalf of Universal) must provide quarterly the following information:
- i. total number of complaints received by Universal for each quarter, broken down by the nature of complaint (agent conduct, contract management, and customer service);
  - ii. a description of any systemic problems that have been identified through the review of the contracts or complaints; and
  - iii. a statement of any action taken by Universal (or Just Energy on behalf of Universal) to remedy the identified problems.

The quarterly reporting must be filed with the Board through the Board Secretary's office, referencing the file number of this decision and order (EB-2010-0034). The first period to be covered by the reporting will be from the date of this order to

September 30, 2010, and must be filed no later than October 30, 2010. Subsequent quarterly reports must be filed no later than 30 days after the end of the reporting period. The quarterly reporting requirement ends with the report for the quarter ending December 30, 2011.

Such reporting will assist the Board in evaluating Just Energy's success in remedying any outstanding issues arising from Universal's former marketing activity.

**IT IS THEREFORE ORDERED THAT:**

1. The electricity retailer licence is granted for a period of two years.
2. The licensee shall abide by the following conditions:
  - a) Universal (or Just Energy on behalf of Universal) must notify the Board if it intends to resume marketing under the authority of this licence, and with that notification, provide the following information:
    - i. the date marketing will commence;
    - ii. a description of all types of marketing that Universal will use; and
    - iii. confirmation that the requisite training of its sales representatives has been undertaken.
  - b) Universal (or Just Energy on behalf of Universal) must provide quarterly the following information:
    - i. total number of complaints received by Universal for each quarter, broken down by the nature of complaint (agent conduct, contract management, and customer service);
    - ii. a description of any systemic problems that have been identified through the review of the contracts or complaints; and
    - iii. a statement of any action taken by Universal (or Just Energy on behalf of Universal) to remedy the identified problems.

The quarterly reporting must be filed with the Board through the Board Secretary's office, referencing the file number of this decision and order (EB-2010-0034). The first period to be covered by the reporting will be from the date of this order to September 30, 2010, and must be filed no later than October 30,

2010. Subsequent quarterly reports must be filed no later than 30 days after the end of the reporting period. The quarterly reporting requirement ends with the report for the quarter ending December 30, 2011.

**DATED** at Toronto, June 17, 2010

**ONTARIO ENERGY BOARD**

*Original Signed By*

Jennifer Lea  
Counsel, Special Projects



# Electricity Retailer Licence

**ER-2010-0034**

## Universal Energy Corporation

Valid Until

June 16, 2012

*Original Signed By*

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**Jennifer Lea**  
**Counsel, Special Projects**  
**Ontario Energy Board**  
**Date of Issuance: June 17, 2010**

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## 1 Definitions

In this Licence:

**“Act”** means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

**“consumer”** means a person who uses, for the person’s own consumption, electricity that the person did not generate;

**“Electricity Act”** means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

**“Licensee”** means Universal Energy Corporation;

**“Market Rules”** means the rules made under section 32 of the Electricity Act; and

**“regulation”** means a regulation made under the Act or the Electricity Act;

**“residential or small business consumer”** means a consumer who annually uses less than 150,000 kWh of electricity;

For the purpose of this Licence, the terms “retailer” and “retailing” do not apply to a Licensed Distribution Company fulfilling its obligations under section 29 of the Electricity Act.

## 2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act or the Electricity Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of this Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this Licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

## 3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this Licence:

- a) to sell or offer to sell electricity to a consumer;
- b) to act as the agent or broker for a retailer with respect to the sale or offering for sale of electricity; and
- c) to act or offer to act as the agent or broker for a consumer with respect to the sale or offering for sale of electricity.

- 3.2 The Licensee is authorized to conduct business in the name under which this Licence is issued, or any trade name(s) listed in Schedule 1.

#### **4 Obligation to Comply with Legislation, Regulations and Market Rules**

- 4.1 The Licensee shall comply with all applicable provisions of the Act, the Electricity Act and regulations under these Acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

#### **5 Obligation to Comply with Codes**

- 5.1 The Licensee shall at all times comply with the following Codes (collectively the "Codes") approved by the Board, except where the Licensee has been specifically exempted from such compliance by the Board:
- a) the Electricity Retailer Code of Conduct;
  - b) the Retail Settlement Code; and
  - c) the Retail Metering Code.
- 5.2 The Licensee shall:
- a) make a copy of the Codes available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of the Codes to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

#### **6 Agent for Service**

- 6.1 If the Licensee does not have an office or other place of business in Ontario, the Licensee shall ensure the continuing appointment at all times of an individual who is a resident of Ontario and is at least 18 years old, or a corporation that has its head office or registered office in Ontario, as the Licensee's agent for service in Ontario on whom service of process, notices or other documentation may be made.

#### **7 Market Power Mitigation Rebates**

- 7.1 The Licensee shall comply with the pass through of Ontario Power Generation rebate conditions set out in Appendix A of this Licence.

#### **8 Provision of Information to the Board**

- 8.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 8.2 Without limiting the generality of paragraph 8.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) days past the date upon which such change occurs.

**9 Customer Complaint and Dispute Resolution**

- 9.1 The Licensee shall participate in a consumer complaints resolution process selected by the Board.

**10 Term of Licence**

- 10.1 This Licence shall take effect on June 17, 2010 and expire on June 16, 2012. The term of this Licence may be extended by the Board.

**11 Fees and Assessments**

- 11.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

**12 Communication**

- 12.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.
- 12.2 All official communication relating to this Licence shall be in writing.
- 12.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail, or by courier;
  - b) ten (10) business days after the date of posting if the communication is sent by regular mail; or
  - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

**13 Copies of the Licence**

- 13.1 The Licensee shall:
- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

**SCHEDULE 1 AUTHORIZED TRADE NAMES**

1. Energy One
2. Energy One Canada
3. Wholesale Energy

## **APPENDIX A**

### **MARKET POWER MITIGATION REBATES**

“OPGI” means Ontario Power Generation Inc.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

#### **“ONTARIO POWER GENERATION INC. rebate”**

A retailer shall promptly return to a distributor any portion of the rebate received from the distributor which relates to low-volume or designated consumers receiving the fixed commodity price for electricity under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998*, who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer or another party.

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.

### **ONTARIO POWER GENERATION INC. REBATES**

For the payments that relate to the period from May 1, 2006 to April 30, 2009, the rules set out below shall apply.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

#### **“ONTARIO POWER GENERATION INC. rebate”**

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.