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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-93-07

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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**A Complaint by Universal Energy Corporation
of a Breach of the Code of Conduct for Gas Marketers
by CEG Energy Options, Inc.**

BEFORE: L.F. Kelsey, Commissioner August 15, 2007
A.W.K. Anderson, Commissioner

O R D E R

WHEREAS:

- A. By letter dated June 18, 2007, Universal Energy Corporation ("Universal") filed a formal complaint that CEG Energy Options, Inc. ("CEG") induced existing Universal customers to break their contracts, and requested that the Commission take appropriate measures on the matter on the basis that CEG had breached the Code of Conduct for Gas Marketers (the "Code"); and
- B. The Code was initially approved by Order No. G-90-03, and was most recently revised by Order No. G-45-07 dated April 20, 2007; and
- C. The Commission by Order No. G-90-03 approved Rules for Gas Marketers (the "Rules"). Rule 10 provides for the enforcement of the Rules and the Code and Licence conditions; and
- D. Commission Order No. A-7-06 dated December 11, 2006, granted CEG a Gas Marketer Licence, subject to several conditions, which include that CEG will comply with the Code; and
- E. By Letter No. L-54-07 dated June 22, 2007, the Commission established a written hearing and Regulatory Timetable for the resolution of the Universal complaint against CEG; and
- F. By letter dated June 28, 2007, Universal filed its Written Submission; and
- G. By letter received July 9, 2007, CEG filed its Written Submission; and
- H. By letter dated July 13, 2007, Universal filed its Reply Submission; and
- I. The Commission has considered the submissions and finds that CEG failed to comply with the Code, which is a condition of its Gas Marketer Licence, with respect to two incidents, for the Reasons for Decision that are attached as Appendix A to this Order.

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NOW THEREFORE pursuant to Section 71.1 of the Utilities Commission Act and the Rules for Gas Marketers, the Commission orders as follows:

1. Within 30 days of the date of this Order, CEG will pay to the Commission a financial penalty of \$1,000.00 for each of the two breaches of the Code, for a total penalty pursuant to this Order of \$2,000.00, with respect to the Universal complaint.
2. CEG will provide a copy of the Code to each Salesperson by the end of August, and each Salesperson will sign a certification acknowledging receipt of the Code.
3. CEG will have its supervisory staff provide monthly retraining to each of its Salespersons in August, September, October and November 2007. The retraining may be conducted individually or in group sessions, will be done in person, and will emphasize the requirement for a Salesperson to comply in spirit as well as to the letter with all obligations of the Code. By the end of the September 2007 retraining, each Salesperson shall have received a detailed review and explanation of the requirements of the Code.
4. CEG will provide training to each new Salesperson prior to the Salesperson contacting Consumers, and the training will include a detailed review and explanation of the requirements of the Code.
5. After each training or retraining session, CEG will have each Salesperson sign a certification that they have been instructed and will comply with the Code. Certifications will be provided to the Commission on request.
6. Within 15 days after the end of August, September, October, November and December 2007, CEG will file a report with the Commission stating the number of Salespersons trained and retrained during the previous month, confirming that all Salespersons were trained or retrained, and providing a summary of the topics covered and a copy of any handout material for the retraining that month.

DATED at the City of Vancouver, in the Province of British Columbia, this 15th day of August 2007.

BY ORDER

Original signed by

L.F. Kelsey
Commissioner

Attachment

**A COMPLAINT BY UNIVERSAL ENERGY CORPORATION
OF A BREACH OF THE CODE OF CONDUCT FOR GAS MARKETERS
BY CEG ENERGY OPTIONS, INC.**

REASONS FOR DECISION

1.0 INTRODUCTION

By letter dated June 18, 2007 Universal Energy Corporation (“Universal”) complained that CEG Energy Options, Inc. (“CEG”) induced existing Universal customers to break their contracts, and requested that the Commission take appropriate measures on the basis that CEG violated the Code of Conduct for Gas Marketers (the “Code”).

Commission Letter No. L-54-07 established a written hearing to resolve the matter. The regulatory process, as well as background on the Code and the Rules for Gas Marketers (the “Rules”), are set out in the Order that accompanies these Reasons for Decision.

Order No. A-7-06 granted CEG a Gas Marketer Licence. In its application for a licence, CEG agreed to accept the obligations of the Code, and compliance with the Code is a condition of its licence. Article 20 of the Code states:

“A Salesperson shall not induce any Consumer to breach a contract with another Gas Marketer.”

Rule 10 of the Rules addresses the enforcement of the Rules, the Code and Licence conditions as follows:

“If the Commission finds, after notice and opportunity for the Gas Marketer to be heard in an oral or written hearing, that a Gas Marketer has failed to comply with the Act, the Rules, the Code of Conduct for Gas Marketers or conditions in its Gas Marketer Licence, and in addition to any other remedies or actions that may be applied, the Commission may:

- a. Suspend or cancel the Gas Marketer Licence.
- b. Amend the terms and conditions of, or impose new terms and conditions on the Gas Marketer Licence until the deficiencies are resolved.
- c. Apply penalties pursuant to Section 106(4) and (5) of the Act not to exceed \$10,000 for each day for each day such violation continues.

- d. Order that a portion or all of the performance security (referred to in Rule 9.0) be paid out to consumers, public utilities or other persons that the Commission considers to have been harmed by an act or omission of the Gas Marketer including a breach of the Act, the Rules, the Code of Conduct for Gas Marketers, or conditions of the Gas Marketer Licence.”

2.0 SUBMISSIONS OF THE PARTIES

Universal provided copies of its contracts with four customers, and recordings which it alleges shows that CEG Salespersons induced the customers to breach their contracts by offering a lower price. Universal submits that three of the calls show that the CEG Salesperson was present during the cancellation call, leading Universal to conclude that the customer was being instructed during the call.

In its Written Submission, CEG addressed each of the four incidents. The individual customers will not be identified in these Reasons for Decision, to protect their privacy.

On being informed of the first incident, CEG immediately terminated the employment of the Salesperson and contacted all of its Salespersons to reinforce that inducing a customer to cancel an agreement with another Gas Marketer is a breach of the Code and grounds for termination.

With regard to the second incident, CEG accepts that the Salesperson was in breach of the Code. Although the name of the Salesperson cannot be identified from the recording, a CEG Salesperson was working in the customer’s area on the date of the cancellation call. As this Salesperson has not been with CEG since the middle of June, CEG considers that no termination is required.

With regard to the third incident, CEG submits that it has concluded that the Salesperson involved was not with CEG at the time of the call. CEG identifies several inconsistencies that support this conclusion, including a gas price quoted by the Salesperson that does not correspond with any price that CEG has offered to the market.

With regard to the fourth incident, CEG states that it does not understand the basis for the complaint, as the customer simply stated that they wanted to cancel the contract because they were offered a lower price from CEG. CEG submits that customers may cancel a contract if they determine on their own accord that a better offer is available, and that there is no evidence that a CEG Salesperson induced the customer to cancel the contract with Universal.

CEG submits that all of its Salespersons understand that they are not to induce customers to cancel their contracts with another Gas Marketer, and undertakes to immediately terminate any Salesperson who is found to be so inducing customers in breach of the Code.

In its Reply Submission, Universal states that it is satisfied with the measures that CEG plans to implement to eliminate further violations of the Code and as such, Universal formally accepts CEG's reply.

3.0 COMMISSION DETERMINATION

In resolving the Universal complaint, the Commission will consider the matter in two steps. First, were activities of CEG in breach of the Code? Second, if it was in breach of the Code, what consequences, if any, should be imposed on CEG?

For the first and second incidents, the evidence of Universal indicates two incidents where Salespersons of CEG induced Universal customers to cancel their contracts with Universal. The submission of CEG did not refute this evidence. After investigating the two incidents, CEG terminated the Salesperson involved in the incident where it was able to identify the Salesperson, and took no further action in the other incident on the basis that the Salesperson is no longer with CEG.

For the third incident, the Commission accepts the submission of CEG that several inconsistencies support a conclusion that the Salesperson was not a CEG Salesperson. For the fourth incident, the Commission accepts the submission of CEG that there is no evidence that the CEG Salesperson induced the customer to cancel the contract with Universal. The Commission considers that simply informing a customer of the CEG price does not constitute a breach of the Code, and there is no evidence that the CEG Salesperson did more than so inform the customer. The Commission notes that, in its Reply Submission, Universal did not dispute the conclusions of CEG, particularly with regard to the third and fourth incidents.

The Commission finds that CEG failed to comply with the Code, which is a condition of its Gas Marketer Licence, with respect to the first and second incidents that are the subject of the Universal complaint, and denies the complaint with respect to the third and fourth incidents.

The Commission considers these breaches of the Code to be a very serious matter. Strict compliance to the spirit as well as the letter of the Code is necessary so that consumers and Gas Marketers have confidence in the arrangements for the unbundling of the residential gas market in British Columbia, and will continue to support unbundling.

Nevertheless, where the Salesperson could be identified and was a CEG Salesperson, CEG dealt with incident in a prompt and decisive manner. CEG also contacted all of its Salespersons to reinforce that inducing a customer to cancel a contract with another Gas Marketer is a breach of the Code and grounds for immediate termination. Moreover, CEG makes no attempt to avoid its responsibility for the actions of its Salespersons.

In this circumstance, the Commission considers that it would not be appropriate to suspend the Gas Marketer Licence of CEG, or to levy a maximum financial penalty against it. **In these specific circumstances, the Commission determines that it will not suspend or cancel CEG's Gas Marketer Licence.**

However, the Commission concludes that this serious failure of CEG to comply with the Code requires a certain amount of financial penalty. Also, the Commission remains concerned that the two incidents may be indicative of deficiencies in the training and supervision that CEG provides to its Salespersons. Ongoing training sessions in direct contact with supervisory staff will help to keep Salespersons aware and fully conscious of their obligations under the Code, and the need for them to treat consumers with consideration and respect. **The Commission directs CEG to pay to the Commission, within 30 days of the date of this Order, a financial penalty of \$1,000.00 for each of the two breaches of the Code, for a total penalty pursuant to this Order of \$2,000.00, with respect to the Universal complaint. Also, the Commission directs CEG to provide retraining to all its Salespersons on a monthly basis in August, September, October and November 2007, to provide training to all newly hired Salespersons, and to provide a report to the Commission on this training and retraining, as set out in the Order that accompanies these Reasons for Decision.**