

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-47-08

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

and

Universal Energy Corporation
Breach of the Code of Conduct for Gas Marketers

BEFORE: L.F. Kelsey, Commissioner March 19, 2008

O R D E R

WHEREAS:

- A. By email dated February 6, 2008, the Commission received a customer complaint regarding an aggressive salesperson from Universal Energy Corporation ("Universal"). Attached to the email complaint was correspondence from the customer to Universal through its customer service email address, which had generated an automatic response; and
- B. The Commission, by letter dated February 11, 2008, wrote to Universal requesting that it advise of the status of the customer's complaint as filed with Universal; and
- C. By email dated February 18, 2008, Universal responded to the Commission's request, noting that the salesperson in question had been identified and immediately terminated; and
- D. Universal advised the Commission that the Customer's complaint to Universal did not reach the intended department and was therefore not addressed; and
- E. By letter dated February 20, 2008, the Commission advised Universal that the alleged market conduct violated Article 14 of the Code of Conduct for Gas Marketers ("Code of Conduct") and the Commission had initiated a written hearing into the matter. The Commission provided Universal with an opportunity to provide further information to the Commission for consideration; and
- F. Universal, in its letter dated February 26, 2008, advised the Commission that agents are trained in how to deal with difficult and abusive customers. Universal also provided the Commission with a copy of an email dated February 18, 2008 from the agent in question, who acknowledged the incident and advised that he had not received training on how to deal with such situations; and
- G. The Commission finds that Universal has violated Article 14 and 29 of the Code of Conduct, and further, that Universal is not in compliance with Commission Order No. G-73-07.

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2

NOW THEREFORE pursuant to section 71.1 of the Utilities Commission Act and the Code of Conduct and Rules for Gas Marketers, the Commission orders that:

1. Within 30 calendar days of the date of this Order, Universal will pay to the Commission a financial penalty of \$2,000.00 for the breach of Article 14 and \$5,000.00 for the breach of Article 29 of the Code of Conduct, for a total penalty pursuant to this Order of \$7,000.00, as set out in the Reasons for Decision attached as Appendix A.
2. Universal will, within 14 days of the date of this Order, provide Code of Conduct re-training to all agents in British Columbia and have all agents certify to the Commission that they have been instructed in and fully understand the Code of Conduct. Any agent not in compliance with this Order may not engage in any marketing activity until such time as they are in compliance.
3. Prior to commencing marketing activity, any new agents must be similarly trained to act in accordance with the Code of Conduct and certify to the Commission that they have been instructed in and fully understand the Code of Conduct. Any new agent not in compliance with this Order may not engage in any marketing activity until such time as they have received and certified that all appropriate training has been received.

DATED at the City of Vancouver, in the Province of British Columbia, this 19th day of March 2008.

BY ORDER

Original signed by

L.F. Kelsey
Commissioner

Attachment

Universal Energy Corporation
Breach of the Code of Conduct for Gas Marketers

REASONS FOR DECISION

1.0 BACKGROUND

By an email letter dated February 6, 2008 Mr. Rick McCallum (“Customer”) advised the British Columbia Utilities Commission (“Commission”) that he had a visit from an aggressive salesperson from Universal Energy Corporation (“Universal”), and that he had sent the complaint, which was appended to the Email, to the offending company and received back just a computerized message. Among other things, the Customer states that the agent “... would not take no for an answer.” “After we concluded our ‘conversation’ he remained standing on my front steps for 30 seconds to a minute, looking through the window in what I would describe as a threatening manner.” The full text of the complaint filed with Universal is attached to this document. The Customer sought the Commission’s assistance in providing an avenue through which the matter could be pursued further. By letter dated February 11, 2008, the Commission advised Universal of the Customer’s request and asked Universal to report on the status of the complaint. By email dated February 18, 2008, Universal reported that “[u]pon receipt of the complaint file from the Commission, Universal contacted the sales agent manager to address the concerns outlined by [the Customer].” Universal stated further “[t]he aggressive and rude behaviour [the Customer] outlined in his letter is unacceptable and not condoned by UEC.” Further, Universal affirmed that the sales agent was immediately terminated as a representative of Universal. The Customer responded to the Universal letter of February 18, 2008 indicating satisfaction with the response and considered the matter closed. Universal also acknowledged that although a process exists to have all complaints forwarded to the compliance department, in this case the communication from the Customer “did not reach the intended department and was therefore not addressed.”

By letter dated February 20, 2008 the Commission advised Universal that the alleged market conduct violates Article 14 of the Code of Conduct for Gas Marketers (“Code of Conduct”), and that the Commission was initiating a written hearing into the matter, including the file correspondence as evidence, and prior to making a determination on the matter, which may include sanctions under the Rules for Gas Marketers, the Commission invited Universal to provide further information for consideration. By letter dated February 26, 2008, Universal provided its reply (“Reply”).

2.0 UNIVERSAL REPLY

In its Reply, Universal states that the agent’s conduct was “an isolated incident that was in part, provoked by the complainant’s own aggressive behaviour.” The agent provided a statement outlining his version of the incident and Universal states, “if the facts are taken as stated, it appears that his outburst, though inexcusable, was a response to the complainant’s provocation.”

Universal states: “Universal’s agents are trained in how to deal with difficult and abusive customers. It is made absolutely clear to the agents that they are not to engage a hostile customer in any dialogue, but are to leave the premises and walk up the street.” It is Universal’s view that this was an unfortunate and isolated incident and is not reflective of any pattern of bad behaviour on the part of Universal’s agents. Universal submits that “no further sanctions are warranted against Universal in respect of this complaint.”

3.0 AGENT STATEMENT

In its Reply, Universal attached a statement from the agent, dated February 18, 2008. In the statement, the agent recalls the incident. He states that he immediately advised his team leader of the situation, is unsure if the information was passed on to management, but does not think it was. The agent states “I was a new agent at the time, never received a prior warning and never had any training on how to deal with such circumstances.”

4.0 CODE OF CONDUCT ARTICLES 14 AND 29

Article 14 states:

“Marketing shall not be intrusive or harassing in nature. Marketing activity (excluding online Marketing) shall be limited to between Monday to Friday between the hours of 9 a.m. and 9:30 p.m. or on Saturday and Sunday between the hours of 10:00 a.m. and 6:00 p.m. local time. The right of a Consumer to refuse further discussion shall be respected.”

Article 29 states:

“The primary responsibility for the observance of this Code rests with the Gas Marketer. Failure to comply with, or breach of, the Code may result in fines or the suspension or revocation of the Gas Marketer’s license for a period to be determined by the Commission. A breach of this Code may occur in the course of inducing a person to enter into an Offer or Consumer’s Agreements, even in the absence of a contract.

Gas Marketers shall ensure that their salespersons adhere to the standards required of a Gas Marketer as set out in the Code of Conduct for Gas Marketers, and shall be accountable for the behaviour and performance of their salespersons.”

5.0 COMMISSION DETERMINATION

There is sufficient evidence before the Commission to determine that the alleged incident did occur. The Commission notes that Universal does acknowledge that the incident occurred; however, at no time in its correspondence with the Commission does Universal accept accountability for the behaviour of its salesperson (agent).

Universal states that its agents are trained to deal with the situation as described and are instructed to “leave the premises and walk up the street.” The agent in his statement states he “never had any training on how to deal with such circumstances.”

Universal, in its letter of February 26, 2008 states “it takes its responsibilities under the Code and specifically Section 14, very seriously and will continue to do so.”

The Commission is of the view that through its actions, and/or the lack thereof, Universal has not demonstrated an acceptance of responsibility for the observance of the Code of Conduct in this case, has not ensured that their salesperson adhered to the standards required of a Gas Marketer, has not provided reliable evidence that it provided to this the agent the training it claims to provide, and by not following up on the incident when reported by the agent, has not demonstrated an accountability for the behaviour and performance of its salespersons, all of which are requirements under Article 29 of the Code of Conduct. The Commission notes that on admission of the incident by the agent, Universal terminated the services of the agent.

The Commission determines that in this matter Universal Energy is in violation of Articles 14 and 29 of the Code of Conduct.

6.0 RULES FOR GAS MARKETERS

Section 10.0 of the Rules for Gas Marketers states:

“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.”

In determining an appropriate remedy or action to apply in this case, the Commission has considered the Universal statement in its letter of February 26, 2008, “Universal takes its responsibilities under the Code of Conduct and specifically Section 14 very seriously, and will continue to do so.” As stated in the Commission Determination, the Commission is not persuaded by the evidence that Universal’s actions in this case are reflective of this claim. The Commission also notes that the services of the agent were terminated for the incident although the agent claims to not have received the training that Universal reports to provide.

Adherence to the Code of Conduct is essential to maintain the integrity of the Customer Choice Program, and the primary responsibility for the observance of the Code of Conduct rests with the Gas Marketer. Being found to be non-compliant and not demonstrating an acceptance of responsibility for compliance is a serious matter.

The Commission applies a penalty of \$2,000.00 against Universal for its violation of Article 14 of the Code of Conduct, and a penalty of \$5,000.00 for its violation of Article 29 of the Code of Conduct, for a total penalty of \$7,000.00 pursuant to this Order.

Universal must, within 14 days of this Decision, also provide Code of Conduct retraining of all agents in British Columbia and have all agents certify to the Commission that they have been instructed in and fully understand the Code of Conduct. Any agent not in compliance with this Order may not engage in any marketing activity until such time as they are in compliance.

Until further notice of the Commission, any new agents must be similarly trained and provide certification to the Commission prior to commencing any marketing activity. Any new agent not in compliance with this Order may not engage in any marketing activity until such time as they are in compliance.