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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-94-07

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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 Wholesale Energy Group Ltd.**

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 Wholesale Energy Group Ltd. ("Wholesale Energy") induced an existing Universal customer to break a contract, and requested that the Commission take appropriate measures on the matter on the basis that Wholesale Energy 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-10-07 dated April 27, 2007, granted Wholesale Energy a Gas Marketer Licence, subject to several conditions, which include that Wholesale Energy will comply with the Code; and
- E. By Letter No. L-55-07 dated June 22, 2007, the Commission established a written hearing and Regulatory Timetable for the resolution of the Universal complaint against Wholesale Energy; and
- F. By letter dated June 28, 2007, Universal filed its Written Submission; and
- G. By letter received July 9, 2007, Wholesale Energy 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 Wholesale Energy failed to comply with the Code, which is a condition of its Gas Marketer Licence, with respect to the incident, for the Reasons for Decision that are attached as Appendix A to this Order.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-94-07

2

NOW THEREFORE pursuant to Section 71.1 of the Utilities Commission Act and the Rules for Gas Marketers, the Commission orders that within 30 days of the date of this Order, Wholesale Energy will pay to the Commission a financial penalty pursuant to this Order of \$1,000.00 for the breach of the Code, with respect to the Universal complaint.

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 WHOLESALE ENERGY GROUP LTD.**

REASONS FOR DECISION

1.0 INTRODUCTION

By letter dated June 18, 2007 Universal Energy Corporation (“Universal”) complained that Wholesale Energy Group Ltd. (“Wholesale Energy”) induced an existing Universal customer to break a contract, and requested that the Commission take appropriate measures on the basis that Wholesale Energy violated the Code of Conduct for Gas Marketers (the “Code”).

Commission Letter No. L-55-07 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-10-07 granted Wholesale Energy a Gas Marketer Licence. In its application for a licence, Wholesale Energy 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 a copy of its contract with a customer, and a recording which it alleges shows that a Wholesale Energy Salesperson induced the customer to breach the contract by offering a lower price. Universal submits that the call shows that the Wholesale Energy Salesperson was present during the cancellation call, leading Universal to conclude that the customer was being instructed during the call.

Wholesale Energy submits that, when it was first notified by Universal of this incident, it immediately investigated and terminated the employment of the Salesperson involved. Wholesale Energy also brought all its Salespersons into the office for retraining with respect to adherence to the Code and the action that it would take with regard to breaches of the Code.

Wholesale Energy believes that the Salesperson was also involved in a similar complaint from another Gas Marketer during the same time period. Wholesale Energy states that these are the only two complaints that it has received regarding this type of activity, and that it believes they were isolated incidents. Wholesale Energy submits that at no time did it instruct its Salespersons to induce customers to cancel contracts. Wholesale Energy states that it will continue to stress compliance with the Code in its ongoing retraining sessions and provides assurance that breaches will not be condoned or tolerated.

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

3.0 COMMISSION DETERMINATION

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

The evidence of Universal indicates one incident where a Salesperson of Wholesale Energy induced a Universal customer to cancel a contract with Universal. Wholesale Energy did not refute this evidence. After investigating the incident, Wholesale Energy terminated the Salesperson involved in the incident. **The Commission finds that Wholesale Energy failed to comply with the Code, which is a condition of its Gas Marketer Licence, with respect to the incident that is the subject of the Universal complaint.**

The Commission considers the breach 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, Wholesale Energy identified the Salesperson, and dealt with incident in a prompt and decisive manner. Wholesale Energy also initiated a retraining program for all of its Salespersons. Wholesale Energy 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 Wholesale Energy, or to levy a maximum financial penalty against it. **In these specific circumstances, the Commission determines that it will not suspend or cancel Wholesale Energy's Gas Marketer Licence.**

However, the Commission concludes that this serious failure of Wholesale Energy to comply with the Code requires a certain amount of financial penalty. In Order No. G-87-07 and accompanying Reasons for Decision regarding a complaint by Energy Savings (B.C.) Limited Partnership ("ESBC") involving Wholesale Energy, the Commission found that Wholesale Energy failed to comply with the Code with respect to three incidents, and levied a financial penalty against Wholesale Energy of \$1,000.00 for each breach of the Code. Considering the timing of the Universal complaint and the possibility that the same Salesperson may also have been involved in the ESBC complaint, the Commission determines that the incident involving the Universal customer should be considered to be similar to the incidents involving ESBC customers. **The Commission directs Wholesale Energy to pay to the Commission, within 30 days of the date of this Order, a financial penalty pursuant to this Order of \$1,000.00 for the breach of the Code, with respect to the Universal complaint.**

Also, the Commission remains concerned that the incident may be indicative of deficiencies in the training and supervision that Wholesale Energy provides to its Salespersons. The Commission identified a similar concern about Wholesale Energy's training and supervision in the Reasons for Decision that accompanied Order

No. G-87-07. In Order No. G-87-07, the Commission directed Wholesale Energy to train and retrain all Salespersons by providing a detailed review and explanation of the requirements of the Code, and to report to the Commission on these activities. 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. However, considering the directions in Order No. G-87-07, there is no need to repeat these directions in the Order that accompanies these Reasons for Decision.