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**VIA EMAIL**

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May 31, 2011

Ms. Diane Roy  
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FortisBC Energy Inc.  
16705 Fraser Highway  
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Dear Ms. Roy:

Re: Terasen Gas Inc.  
Customer Choice – 2010 Program Summary and Recommendations

Further to your November 23, 2010 filing of the Customer Choice 2010 Program Summary and Recommendations Application, enclosed please find Commission Order A-9-11 and the Commission's Decision.

Yours truly,

  
for: Alanna Gillis

/dg

Enclosures

cc: Gas Marketers  
(NGM)



**IN THE MATTER OF**

**TERASEN GAS INC.**

**CUSTOMER CHOICE  
2010 PROGRAM SUMMARY AND RECOMMENDATIONS**

**DECISION**

**May 26, 2011**

**Before:**

**L.F. Kelsey, Commissioner  
C.A. Brown, Commissioner  
N.E. MacMurchy, Commissioner  
D. Morton, Commissioner**

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### COMMISSION ORDER A-9-11

#### APPENDICES

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## 1.0 INTRODUCTION

In 1985 British Columbia became the first jurisdiction in North America to allow large industrial and institutional customers to purchase their natural gas commodity from gas producers or marketers rather than solely as a bundled service from their utility. In 2002 the Government of British Columbia issued its energy policy, “Energy Plan for our Future: A Plan for BC.” Policy Action #19 stated, in part, that “The Utilities Commission Act will be amended in spring 2003 to allow direct natural gas sales to low-volume customers, and to require the licensing of marketers who serve those customers.” In accordance with this policy, Terasen Gas Inc. (Terasen Gas) implemented the commodity unbundling service for small and large commercial customers in 2004. Terasen Gas obtained approval from the BC Utilities Commission (the Commission) in 2006 for the Commodity Unbundling Project for Residential Customers (Customer Choice).

As a result of the 2002 Energy Policy, the *Utilities Commission Act* was amended to empower the Commission under section 71 to make rules as well as licensing terms and conditions that a gas marketing company must comply with. The Commission established Rules for Gas Marketers and a Code of Conduct, both of which have been modified from time to time as a result of program enhancements.

The matter reviewed through this Decision is an application made by Terasen Gas Inc., now known as FortisBC Energy Inc. As the application filed by Terasen Gas Inc. refers to a process before the Commission that took place prior to the name change, and because submissions were received from Terasen Gas Inc., the name change is not reflected throughout this Decision.

On September 8, 2010 the Commission hosted the third Customer Choice Annual General Meeting (AGM) to discuss suggested program enhancements made by interested parties. Following the AGM, on November 23, 2010 Terasen Gas filed an application for 2010 Program Summary and Recommendations (the application). Commission Order G-191-10 established a written public hearing process and regulatory timetable for the review of the application. Participants of the AGM and interveners in the written hearing of the application are listed in Appendix A to this Decision.

Through this Decision, the Commission addresses the issues outlined in Terasen Gas's application and makes determinations where required. In particular, the Commission determines that several of the business rules that currently apply for residential customers, such as the mandatory third party verification call (TPV), the confirmation letter, and a mandatory 10-day cancellation period, shall also apply for Rate Schedule 2 and 3 commercial customers with certain requirements and exceptions.

In addition, the Commission eliminates the Evergreen Provision previously permitted whereby, with certain notice requirements, a gas marketing company could automatically renew a customer's contract for a period of one year at the same commodity costs as agreed upon in the original contract.

## **2.0 2010 AGM ISSUES DISCUSSED/DETERMINATIONS**

The following sections discuss the merits of the issues discussed at the 2010 AGM, the Terasen Gas application entitled Customer Choice – 2010 Program Summary and Recommendations and the submissions by interveners in the written hearing process.

### **2.1 Consolidated Business Rules**

Currently, several consumer protection measures exist for residential customers enrolled in the Customer Choice Program. These measures include a mandatory TPV which confirms the customer understands the key terms of the agreement; a confirmation letter which is addressed to the Terasen Gas account holder that advises of the mandatory cancellation period; and the option to file contract disputes via the Gateway for Energy Marketers (GEM). GEM is a web-based system established and managed by Terasen Gas. The Commission and the gas marketers have access to certain reporting provided through GEM as well as for the purposes of disputes handling. The Commission adjudicates disputes that are filed through GEM and communicates rulings to the customer and to the gas marketing company.

In its application, Terasen Gas suggests the consumer protection rules that apply for residential customers should also apply to Rate Schedule 2 and 3 commercial customers. Rate Schedule 2 customers are referred to as small commercial customers. The Rate Schedule 2 customer has an annual consumption of less than 2,000 GJ/year though in some cases – such as a customer who has multiple locations – aggregate volume can exceed 2,000 GJ/year. Rate Schedule 3 customers are referred to as large commercial customers whose annual consumption would exceed 2,000 GJ/year.

### 2.1.1 Third Party Verification Calls

Residential customers are currently required to verify via a TPV call the terms of a contract entered into with a gas marketing company. The TPV occurs by telephone within 24-96 hours after the sales call is made and the contract is signed. In its final submission, Terasen Gas states that having the same requirement for commercial customers “... would improve the likelihood that the Agreement has been signed by an authorized signatory, and give small commercial customers more opportunity to review the nature and extent of the Consumer’s Agreement that they have signed.” (Terasen Gas Final Submission, p. 11) In its original application, Terasen Gas acknowledges that the TPV could be abbreviated for large commercial customers and does not need to be as rigorous as for residential customers. (Terasen Gas Application, Appendix A, p. 4)

At the AGM, Commission staff suggested some flexibility in terms of the upper time limit for when TPV calls must be completed and invited discussion on increasing the upper limit. This would allow sufficient time for customers to read the documentation, particularly the Standard Information Booklet that gas marketers must provide to customers at the door (or online for web enrollments). No participant expressed concern with this suggestion. If a gas marketer conducts the TPV call during the later part of the timeframe permitted, the cancellation period will effectively be extended as it cannot begin until the contract is successfully executed, which includes a completed TPV. **The Commission amends the residential customer’s 24-96 hour rule so that the TPV may be completed no sooner than 24 hours after the customer executes the contract, and may occur no later than 10 calendar days after the customer executes the contract.**

Direct Energy does not support the implementation of the TPV call for all commercial accounts. It believes that the circumstances do not warrant the change, and due to suggested changes with the confirmation letter and the cancellation period for Rate Schedule 2 and 3 customers, it suggests the Commission should reject the request. (Direct Energy Final Submission, p. 2)

Just Energy is agreeable to requiring the TPV calls for commercial customers provided that the 24-96 hour rule that currently serves residential enrolments does not apply, and provided that the call is an abbreviated call requesting only certain information. (Just Energy Final Submission, p. 1)

**The Commission finds that a Third Party Verification call for all commercial customers is necessary to ensure appropriate consumer protection measures are taken that will prevent allegations of forgery or unauthorized signatures on commercial contracts.** Through complaint and disputes handling we note that generally commercial customers are less likely than residential customers to identify allegations of this nature in a timely manner. This can be due to different levels of authority handling finances within the business, and can also be as a result of a less diligent review of the gas bill associated with the commercial location.

**A standardized TPV script will be implemented for Rate Schedule 2 and 3 customers requiring certain points to be clearly confirmed.**

**As we see many similarities between residential and Rate Schedule 2 customers, the 24 hour waiting period applies to both of these rate classes and the TPV must be complete within 10 days of executing the agreement. The sales representative is not permitted to be on the premise during the TPV call with a residential or Rate Schedule 2 customer.**

**Only Rate Schedule 3 commercial customers are exempt from the 24 hour TPV waiting period; these customers are permitted to complete the TPV immediately upon execution of the contract, and no later than 10 business days after the contract is signed.**



The script for residential customers is attached as Appendix B to this Decision, as well as the points for confirmation required of small commercial and large commercial customers. Slight amendments are made to the residential script for conciseness and clarity and to introduce confirmation of potential additional costs related to green options. **The attached script is the required script for all residential enrollments effective July 1, 2011. Effective the same date, gas marketers who are conducting TPVs with an approved amended script are no longer permitted to use their amended script; if amendments are desired to the revised script attached to this Decision, applications can be made to the Commission.**

#### 2.1.2 Confirmation Letters to Commercial Customers

A confirmation letter is automatically generated for residential customers when the enrolment is submitted to Terasen Gas by the gas marketer via GEM. The confirmation letter assumes that a wet or electronic signature has been obtained, per the requirements, and a successful TPV call has been recorded. The confirmation letter acknowledges the agreement made with the gas marketer and advises of the last available day to cancel the contract if the customer chooses to do so.

In its application, Terasen Gas suggests sending these confirmation letters to each commercial customer enrolled and suggests that confirmation letters for Rate Schedule 2 customers would specify the Consumer Agreement details and the 10-day cancellation period. Since Rate Schedule 3 customers have the option to opt out of the 10-day cancellation period, the confirmation letters sent to them would only confirm the transaction. (Terasen Gas Application, p. 6) However, in its final submission, Terasen Gas concludes that it would be preferable to have one confirmation letter for Rate Schedule 2 and 3 customers and suggests that waiver rights would apply to Rate Schedule 3 customers and those Rate Schedule 2 customers that consume over 2,000 GJs per year in aggregate. (Terasen Gas Final Submission, p. 13)

Just Energy disagrees that confirmation letters should be sent to Rate Schedule 2 commercial customers but rather an "abbreviated notification letter be sent to the account holder to notify them that their gas supplier has been switched and of the details of the Consumer Agreement with

the retailer” (in essence, the term, price, and marketer name and phone number). Just Energy believes that providing information about a 10-day cancellation window will “cause confusion and lead to calls to the BCUC, the marketer and to Terasen.” Just Energy supports the abbreviated notification letter approach for all commercial customers. (Just Energy Final Submission, pp. 2, 3)

The mandatory 10-day cancellation for residential customers is discussed through the next section, though it impacts the content of the confirmation letter. **The Commission determines that confirmation letters are to be sent to all commercial customers in order to provide adequate notice of the executed agreement to the account holder on the Terasen Gas account.** Although it would be preferable to have one common confirmation for all residential and commercial customers, the Commission recognizes that the circumstances may dictate certain differences between the residential and small commercial customers and the Rate Schedule 3 and aggregated Rate Schedule 2 customers. Therefore, two letters may be required. **The Commission directs Terasen Gas to draft the confirmation letter(s) for Commission staff to review. A draft will then be provided to gas marketers for comment.**

### 2.1.3 Cancellation Period

Terasen Gas outlines in its application that for most commercial customers, cancellation rights include a mandatory 10-day cancellation period that occurs before the enrolment request is submitted to Terasen Gas; however, the 10-day cancellation period may not apply in the case of a single (Rate Schedule 2) commercial consumer whose aggregate annual volume exceeds 2,000 GJs per year at one or more premises and who has provided written consent to the gas marketer to waive their 10-day cancellation period. (Terasen Gas Application, Appendix A, p. 9)

Terasen Gas recommends that the cancellation period for Rate Schedule 2 customers should be applied in a fashion consistent with current practice used for residential customers. Specifically, the cancellation period should begin when Terasen Gas receives the enrolment request and the confirmation letter is sent out. Consistent with gas marketer and Commission staff recommendations, Terasen Gas agrees that Rate Schedule 3 confirmation letters should only act to

confirm the transaction; these customers will not be afforded a subsequent 10 day cancellation period. Gas marketers are reminded to obtain written confirmation of the customer's agreement to waive this cooling off period. (Terasen Gas Application, Appendix A, p. 10)

In its final submission, Just Energy states that "...there is no change required to the current cancellation period." Just Energy believes that large volume commercial customers and those customers whose aggregate volumes exceed 2,000 gigajoules per year at one or more than one premises, Rate Schedule 2 and 3, should not be subject to the same cancellation period as for small volume customers. Just Energy suggests that "...the cancellation opt out provision should be extended to all commercial customers regardless of the customers aggregate annual volume in order that these customers may take advantage of 'live' market pricing." (Just Energy Final Submission, p. 3)

Direct Energy commented in its final submission that it is "amenable to the proposal put forth by TGI in its response to Just Energy information request 1.7 wherein they state that all Rate Schedule 3 customers and some Rate Schedule 2 customers who consume over 2,000 GJs per year when all premises are included may choose to waive their 10-day cancellation period."

The Commission considers Rate Schedule 2 customers likely demonstrate similar knowledge and experience as residential customers in terms of securing long-term gas supply. The 10-day cancellation period is an appropriate measure to ensure residential and commercial customers (small and large) have an opportunity to cancel a contract within 10 days without penalty. **We determine that a mandatory 10-day cancellation period shall apply to all customers; however, recognizing potential advantages to securing competitive 'live' market pricing from a gas marketer, those Rate Schedule 2 customers whose aggregate annual consumption exceeds 2,000 gigajoules per year over one or more enrolled locations, as well as Rate Schedule 3 customers, may waive their right to a cancellation period. In every circumstance regardless of whether the cancellation period is waived, the contract must be submitted to Terasen Gas upon execution of the contract and upon successful completion of the TPV which will trigger a confirmation letter to be automatically provided to the Terasen Gas account holder.**

If an eligible Rate Schedule 2 customer or a Rate Schedule 3 customer elects to waive the cancellation right, the option must be clearly outlined on the contract and the customer must provide a signature for consent. Confirmation of the consent to waive the cancellation right must also be confirmed in the TPV call in addition to confirmation that the small commercial customer's annual aggregate volume over one or more premises exceeds 2000 GJs per year.

#### 2.1.4 Disputes Handling

GEM currently records disputes raised related to residential or commercial customers, though since the system was originally created for residential disputes, it was not explicitly stated at that time that commercial disputes can be logged via this forum as well.

A common dispute handling process is proposed to align commercial and residential rules, thereby affording all customers the opportunity to raise their disputes simply by calling the Terasen Gas contact centre. (Terasen Gas Application, Appendix A, pp. 10, 11)

No intervener was opposed to this request and the Commission agrees that there should be one streamlined process for disputes handling, regardless of the customer's rate schedule. This process creates consistency for all rate schedules in having a disputed contract reviewed and also provides administrative simplicity in filing and monitoring disputes. **The Commission finds that all disputes shall be filed through GEM after an attempt to resolve the matter directly with the other party has been made.**

## **2.2 Disputes and Cancellations**

### 2.2.1 Cancellations and Courtesy Drops

Terasen Gas recommends no changes to the cancellation and courtesy drop rules. No participant commented on this particular point.

In order to ensure efficiency and integrity within the Essential Services Model (ESM), **the current structure of cancellation and courtesy drops may continue in that they are to be used only where required for compassionate reasons, so as not to create unnecessary and unanticipated costs to Terasen Gas in order to supply returning customers.** While the current structure allows for compassionate cancellations to occur, the Commission remains concerned that this option may be misused by gas marketers in certain instances. The Commission will strictly monitor the use of cancellations via GEM and action may be taken where it is found that cancellation and courtesy drop requests are used in instances where violations of the Code of Conduct have occurred.

### 2.2.2 Dispute and Cancellation Fees

Currently, a \$50 fee applies for matters filed in GEM such as courtesy drops, cancellation requests, and disputes filed where a ruling is made in favour of the customer. This fee is applied against each gas marketer's monthly settlement with Terasen Gas. The purpose of the \$50 fee is to incent honest sales practices, and therefore, Terasen Gas believes it is a cost that should not be borne by customers. The BCOAPO agrees that these costs should not be forwarded to the customers. Just Energy believes that the \$50 dispute fee should remain as is, with gas marketers permitted to pass the cost on to customers. (Terasen Gas Final Submission, p. 17)

**The Commission is of the view that this \$50 fee amount remains reasonable at this time.** The \$50 fee is intended not only to incent honest sales practices as Terasen Gas mentions; it is primarily intended to cover the costs of administering these transactions. The fee is a charge to the gas marketer and not to the Program; therefore, if the marketer elects to recover this is in its business transactions, **a customer must not be misled by being advised that the fee is required of them in order to be relieved of the contract obligations for compassionate, hardship or humanitarian reasons.**

### 2.2.3 Dispute Procedures

At the AGM, Commission staff proposed that customers be provided with a second opportunity in the dispute process to respond to gas marketers' comments prior to adjudication. Terasen Gas submits that consistent with BCOAPO's views, it sees that the Commission would take responsibility to ensure that customers are fully informed of all details, and would solicit customers for their final input. However, modifications would be required in GEM in order to support the suggested change, so implementation may be delayed post 2012. (Terasen Gas Application, Appendix A, p. 20)

No participant disagreed with the concept of improving the dispute process.

**The Commission finds that the most efficient method of handling this substantial program enhancement is to create a working group minimally consisting of representatives of Terasen Gas, Commission staff, and a delegated person or persons of the gas marketers. The working group will review and propose a new streamlined and reliable method of handling disputes that is fully compliant with the relevant acts related to procedural fairness and that also supports the Essential Services Model. Once the working group has established a proposal, the matter shall be brought before the Commission for final review.**

The objectives of the working group, in part, will be to streamline the process to allow for deliberate claims by applicants rather than interpretations through call centre representatives, and to implement measures that enhance procedural fairness. The Commission agrees with BCOAPO's comments that the customer should have online access to their dispute and we suggest that the working group investigate options to provide the customer the ability to monitor his/her dispute, to file evidence, and to review the determination once made.

**In addition, this working group shall consider new dispute messaging for the Standard Information Booklet, as well as communication for Terasen Gas's and the Commission's websites that would explain the dispute process.**

### 2.3 Dispute Ruling Page Improvements

The suggested improvement to the dispute ruling page in GEM is to add a text box at the end of the page that would record the customer's final comments related to the dispute. This would afford customers an opportunity to respond to evidence submitted by their gas marketer and make the dispute procedure similar to a small claim application. (Terasen Gas Application, Appendix A, p. 65)

Terasen Gas also proposes a change to the Dispute Ruling page to provide additional information regarding compensation responsibility (i.e., gas marketer or Terasen Gas) and the effective date for reimbursement. Currently, the effective date for reimbursement is typically set as the date the dispute was filed or a maximum six months prior. There is no mechanism in GEM to identify the customer reimbursement period to the gas marketer. The changes would provide Commission staff with more options to set multiple effective dates for the dispute ruling. The estimated cost to complete these changes to the Dispute Ruling page is \$5,460. (Terasen Gas Application, Appendix A, p. 65)

The benefit to these changes would be that Commission staff can set two effective dates, as follows:

- 1) The date the contract should be dropped in the enrolment database and the date Terasen Gas should reverse and rebill the customer; and
- 2) The effective date the gas marketer is required to reimburse the customer. The scenario where two effective dates are required happens when a gas marketer is required to reimburse the customer back to the start of their contract.

The amount owed to the customer would then be included in a GEM report. (Terasen Gas Application, pp. 65 - 67)

The changes proposed were not disputed by participants in the proceeding.

**The Commission approves all proposed changes to the dispute ruling page.** This proposed Final Comments field is approved but not for the applied for purpose; the Commission will use this field for its own final comments that may need to be made on the file before the dispute is closed. The idea of a comment field intended for a customer's final remarks is better suited for consideration overall by the working group when the full scope of the dispute procedures are being reviewed. In addition to the supported changes, the Commission encourages Terasen Gas to make available on the dispute ruling page the amount of the reimbursement that is calculated so that the Commission can communicate that information to the customer through the dispute ruling letter. If this is not possible, the calculations of the reimbursements should be made available to the Commission through another method for review in the event of a dispute.

## **2.4 Contract Renewals**

### 2.4.1 Evergreen Provision

The evergreen provision on a natural gas marketing contract allows the gas marketing company to re-enroll a customer for a 12-month period at the same rate as in the current contract if no contact is made by the customer within the allotted timeframe after receiving their renewal notice from the gas marketer. Terasen Gas proposes in its application to phase out evergreen contracts "...mainly because the practice fails to adequately protect consumers" "...evergreen contracts are inconsistent with consumer protection goals, are often perceived as a deceptive business practice, and can necessitate costly manual corrections in Terasen Gas back office." Terasen Gas proposes grandfathering existing evergreen contracts for one year and removing the evergreen option effective March 31, 2011. (Terasen Gas Application, pp. 23, 24)

Just Energy does not support the discontinuance or grandfathering of existing evergreen renewals and believes evergreen renewals should continue (Just Energy Final Submission, pp. 5, 6). Just Energy's opinion is that customers choose to have their natural gas supplied by a specific gas marketer by signing an agreement with that gas marketer. The contract indicates that it will be effortlessly renewed if the customer takes no steps to cancel the renewal. Unless the customer



indicates that they no longer wish to remain with the gas marketer, the customer's agreement renewal should be allowed the convenience of renewing without any further action required. Other consumer services (cell phone, internet, insurance) afford the customer the ability to automatically renew and the Customer Choice Program should be no different.

BCOAPO submits that to "...legally bind customers to extensions, without turning their minds to whether or not they wish to continue their arrangements, is repugnant and has attracted well-deserved public criticism. It is a feature which has contributed to the well-founded controversy surrounding this program. It is time for it to end, immediately and with no exceptions." It further suggests that "a marketer should be required to obtain an affirmative, fresh contract from a Terasen account holder in order to continue purchasing gas for that customer beyond the nominal expiry date of the existing contract. No one has ever raised a cogent explanation why this is not reasonable, especially given the considerable public unease about this entire venture." (BCOAPO Final Submission, pp. 1, 2)

**The Commission determines that the Evergreen Provision shall be discontinued with no circumstances warranting grandfathering of the provision.** The Commission expressed concerns over the evergreen provision in the past and those concerns remain; particularly the burden of proof with the receipt of the renewal package and whether or not it was sent, received, or reviewed by the appropriate person prior to the contract being evergreened. We agree with Just Energy that it should be effortless to continue service and it is our view that can be done by the gas marketer taking initiative early to provide clear communication to their customer, allowing them to enroll in continued service at an agreed upon rate. Many contracts due for renewal over the next one to two years were signed before there was a requirement for a TPV which was put in place to overcome deceptive marketing practices. Grandfathering the evergreen provision would mainly capture those customers who were provided with less consumer protection measures than are available today. With the elimination of the evergreen clause, the Commission's intent is to promote a more reputable sales model, where gas marketers promote their business to customers, and allow the customers to choose their product.

All gas marketers are to send notices to their customers advising of this policy change and explaining how it impacts their contract. These notices must be reviewed by the Commission prior to distribution to customers. The effective date to discontinue the evergreen provision will be for renewal notices scheduled to be sent out on or after July 1, 2011. In essence, since a renewal package must be provided no later than 90 days prior to the expiration of the contract, no contract expiring on or after October 1, 2011 may be automatically renewed.

#### 2.4.2 Renewal Notices for Evergreen Contracts

For evergreen contracts, the current process calls for gas marketers to send out renewal notices to its customers no less than 90 days prior to the renewal date. There is no standardized format or set of requirements for these notices.

With the evergreen provision discontinued, the renewal package or marketing material provided to the customer in an effort to solicit a new contract with an existing customer must comply with the Code of Conduct and Rules for Gas Marketers.

Renewal is defined in the Code of Conduct as “the replacement of an existing contract with a further contract with the same gas marketer which will have a new term; may have a different price than the Consumer’s previous contract; and may also include revisions as a result of changes in law, the Code of Conduct or Rules for Gas Marketers.” **All relevant Rules, Code of Conduct and Licence conditions apply to the solicitation and enrolment of a renewed customer, though in instances where a customer is responding in writing to written material which is fully compliant with the Code of Conduct, a Third Party Verification call is not required. The renewal package and acceptance of a renewal offer must be provided to and obtained from the account holder, and maintained on record by the gas marketer for the duration of the renewed agreement with true copies available to the Commission upon request.**

### 2.4.3 Contract Renewals and Blend & Extend Offering

Renewed contracts may have a new term, a different price, and may also include revisions as a result of changes in law, the Code of Conduct or Rules for Gas Marketers. Blend & Extend offerings represent a marketing term coined by gas marketers which allow customers the opportunity to pay a lower, blended rate, for a revised term beginning on their next contract anniversary date.

(Terasen Gas Application, Appendix A, p. 33)

Terasen Gas is of the opinion that repeat customers should be protected by the same rights and safeguards that are afforded to new customers. (Terasen Gas Application, p. 36) Terasen Gas agrees with the BCOAPO that enrolling a customer in a Consumer Agreement that features a different price equates to a new contract rather than an extension of an existing contract. (Terasen Gas Final Submission, p. 15)

Just Energy states that it and Summitt Energy agree that the Blend and Extend option is part of the Terms and Conditions of the customer's existing contract, this provision allows the customer to pay a lower blended rate for an extended term. As the customer is already familiar with the contract there should be no further need for a TPV call. Just Energy also believes that should a customer cancel his/her new blend and extend contract that the original contract must remain in effect. Just Energy has implemented a modified TPV script for Blend and Extend offers as requested by the Commission and will continue to use it, even though it has had complaints that the length of the script is concerning for the customers. (Just Energy Final Submission, p. 7)

As noted by Terasen Gas in its submissions, Blend and Extend is a term coined by gas marketers and not defined in established Rules or Code of Conduct for Gas Marketers. The term is used to refer to a situation where one contract is effectively being cancelled on an anniversary date of the original agreement and another is being implemented for an extended term. **For this reason, regardless of the term used, the Commission determines Blend and Extend offerings must comply with the Renewal Provisions in that all relevant Rules, Code of Conduct and Licence conditions apply to the solicitation and enrolment of a Blend and Extend customer, though in**

instances where a customer is responding in writing to written material which is fully compliant with the Code of Conduct, a Third Party Verification call is not required. The Blend and Extend package and acceptance of a Blend and Extend offer must be provided to and obtained from the account holder and maintained on record by the gas marketer for the duration of the extended agreement with true copies available to the Commission upon request. Since a new enrolment will automatically trigger a confirmation letter notifying the customer of the 10 day cancellation period, if the customer elects to use this cancellation period, the original contract will be reinstated.

## 2.5 Authority to Sign Contracts

Commission staff raised this topic at the AGM to discuss whether account transfers from Terasen Gas to a gas marketer should be permitted by a party other than the premise account holder. Gas marketers are currently under no obligation to obtain signatures of current account holders on contracts. Thus, the signatories may or may not be those who can appropriately bind the account holders to gas marketer contracts. As a result, the Commission has received a number of complaints and disputes relating to unauthorized signatories on residential and commercial contracts. (Terasen Gas Application, Appendix A, p. 37)

Just Energy feels that for residential customers the account holder and their spouse or authorized representative, Power of Attorney, should be acceptable signatories to a contract. The TPV call should be completed with the same individual that signed the contract as that person would be knowledgeable about the contract details. (Just Energy Final Submission, p. 7)

With respect to businesses, Just Energy believes that gas marketers should obtain the signatory's name and title and confirm that the individual is authorized to bind the company to a contract. If the individual identifies that he/she does not have the authority to bind the company the contract should be considered void and must be agreed to with the appropriate authorized individual. (Just Energy Final Submission, p. 7)

Terasen Gas disagrees with the Commission staff's suggestion to limit authorized signatories to account holders. Terasen Gas believes the current consumer protection rules are sufficient to protect both residential and commercial customers once the consumer protection activities are aligned. (Terasen Gas Final Submission, p. 17)

For residential contracts, BCOAPO contends that the issue is about ensuring that contracts are legally enforceable against the appropriate account holders. From a legal standpoint, evidence should be required to show that account holders have consented to be bound, so that they are personally liable under contract. BCOAPO sees that the most effective way to routinely do this is to collect signatures directly from the account holders. (Terasen Gas Application, Appendix A, p. 37)

Account holder information for residential customers has its own complications. While residential accounts may be kept more current than commercial accounts (i.e. no frequent employee turnover to contend with), some residential customers are registered only by their first initial/last name. There are households where spouses may share the same first initial. In those instances, the gas marketers cannot know which spouse is the correct one to authorize the Consumer Agreement. There are currently three mechanisms in place that help protect residential customers against fraudulent behaviour. Firstly, residential Consumer Agreements are validated through a rigorous TPV call in which respondents are asked to verify that they have the authority to sign. Secondly, account holders receive a confirmation letter advising them of the upcoming supplier change to a gas marketer at a fixed rate. Lastly customers are given 10 days' grace to cancel the contract from the date the confirmation letter is sent out. These consumer protection mechanisms help to shield residential customers from inappropriate behaviour. (Terasen Gas Application, pp. 37-39)

**The Commission accepts the concerns raised by Terasen Gas and gas marketers and determines that account holders and their spouses, or a legally authorized representative of the account holder may sign a residential gas marketer agreement. The confirmation letter must continue to be sent to the attention of the account holder.**

**The Commission determines that in the case of a commercial customer, an officer or authorized representative of the company may execute the Agreement. The contract must confirm the name, title and confirmation of the authority of the person signing on behalf of the company.**

## **2.6 Additional Line Item on the Terasen Gas Bill**

A cornerstone of the ESM has been Terasen Gas's ongoing responsibility to provide billing services for all customers whether they chose a fixed rate product from a gas marketer or remain on the Terasen Gas regulated variable rate. This business requirement was affirmed by gas marketers when the Commercial Unbundling Program was introduced in 2004, and again when Customer Choice was rolled out to residential customers in 2007. (Terasen Gas Application, Appendix A, pp. 39, 40)

Just Energy proposes an additional line item on the Terasen Gas bill to include charges for other gas marketer products and services, such as green offsets, demand side management/conservation products (including high efficiency water heaters), and energy efficient products and/or services. (Terasen Gas Application, Appendix A, p. 40)

A thorough and detailed scoping of requirements would be required to fully understand the required changes and costs to accommodate an additional line on the Terasen Gas bill. However, Terasen Gas opposes any changes to the Terasen Gas bill to accommodate the sale of gas marketers' non-gas commodity products or services. Terasen Gas believes that customers should not have to pay to support the sale of gas marketers' non-gas commodity related offerings. Terasen Gas has been consistent with its position on this topic since the inception of the Commercial Unbundling Program in 2004. (Terasen Gas Application, Appendix A, p. 42)

Gas marketers have also requested greater access to the Terasen Gas bill to assist in the delivery of sales messages to Terasen Gas customers. This additional access may include bill inserts, and bill or envelope messaging. Terasen Gas strongly opposes this request. Terasen Gas contends that considerable steps have been taken by the Commission and Terasen Gas to distance gas marketers

from the utility. The existing Customer Choice program has already fulfilled the mandate originally set forth in the 2002 BC Energy Plan, specifically allowing low-volume natural gas consumers the choice to purchase commodity from third-party suppliers. Terasen Gas believes that introducing an additional line on the Company's bill for third-party service providers offers minimal value or benefit for Terasen Gas customers. (Terasen Gas Final Submission, p. 16)

Just Energy sees a value-added benefit to consumers if gas marketers were to expand their product offerings to other related products and services such as carbon offsets, water heaters, and energy efficient products including furnaces. Just Energy believes that a model similar to the Enbridge Gas model should be explored to determine its feasibility in the BC market. The existing Enbridge Gas model results in a benefit to ratepayers and Just Energy submits that a similar model could result in benefits to ratepayers in BC. Just Energy suggests that a feasibility study should be undertaken that would determine if the option is viable. The study should include the cost to provide the service, how it would be utilized, who would utilize the service, how it would be presented, how the service would be priced, etc. Just Energy respectfully submits that the environment has changed significantly since the opening of the natural gas market and the introduction of the Customer Choice program especially when it comes to the environment, carbon footprint offsets and green energy products. (Just Energy Final Submission, p. 8)

**The Commission agrees with Terasen Gas that it is not warranted at this time for an additional line item on the Terasen Gas invoice to be used for gas marketer non-commodity products or services. Separation between Terasen Gas and the gas marketing companies continues to be necessary and allowing invoicing for costs related to utility services and gas marketing services to appear on the utility bill may cause unnecessary confusion for customers in terms of the relationships between the companies. In addition, it is the Commission's view that it would be inappropriate for the utility to potentially be required to undertake collections activity on items owing to the gas marketing company and it is similarly concerning that a customer's credit could be impacted with the utility due to a cost owing for a service other than commodity to the gas marketing company.**

If Just Energy or the gas marketing group collectively wishes to conduct a feasibility study, the Commission would receive that study with a separate application on this topic for further review.

## **2.7 Retrieval of Customer's Usage Information**

Just Energy proposed to reinstate the former process whereby gas marketers were able to access consenting commercial customers' historical consumption information from Terasen Gas by an authorization form sent via fax or email. This was implemented originally in the 2004 Commercial Unbundling and dropped as a result of lack of use. (Terasen Gas Application, Appendix A, p. 44)

In its final submission, Terasen Gas concludes that the estimated cost of reinstating this system is \$7,500 and noted that only Just Energy requested the feature. Terasen Gas confirmed that commercial customers can obtain their historical consumption data via Account Online or through the Terasen Gas contact centre. Terasen Gas's alternative approach would be to charge \$10 per fax, an approach that Just Energy agrees is reasonable. (Terasen Gas Final Submission, p. 14)

**The Commission accepts the compromise alternative approach for Terasen Gas to charge \$10 per fax to allow gas marketers to access consenting commercial customers' historical consumption information from Terasen Gas.**

## **2.8 Price Point Charges (Group Fee)**

Terasen Gas charges gas marketers a Marketer Group Administration fee (i.e. price point charge) of \$150 on a monthly basis. The fee is based on the number of Marketer Groups in effect for each gas marketer as of the first of that month. This fee has been in place since the Commercial Unbundling program was first introduced in 2004. (Terasen Gas Application, Appendix A, p. 45)

Specifically, the group fee is designed to offset the cost to set up and maintain rates in the Energy Customer Information System. Terasen Gas reviewed group fee charges during the scoping phase of the Residential Unbundling program in 2006. At that time, Terasen Gas confirmed that the \$150



monthly fee was still necessary and accurate (it is a flow-through charge from Accenture). Terasen Gas can review this group fee in 2012, after it has repatriated contact center services from Accenture. (Terasen Gas Application, Appendix A, p. 46)

Just Energy requests clarification for why the price point fee is so high. It also suggests that there should be no charge for the creation of new price points. Just Energy claims that a high fee is not conducive to gas marketers offering a number of price points. For example, when commodity prices fall, Just Energy would like to offer customers a lower price. However, paying \$150 per month, per price point fee is a tangible barrier. (Terasen Gas Application, Appendix A, p. 45)

Terasen Gas maintains that the existing fee structure accurately reflects the costs to add and maintain gas marketer groups, and as such, the fee should not change at this time. Terasen Gas charges gas marketers a variety of program fees necessary to support the Customer Choice program. These fees, including the group fee, are currently sufficient to cover the administrative costs and operating and maintenance costs. These charges should be left in place and adjusted as necessary to ensure that the operating costs incurred by Terasen Gas to facilitate the Customer Choice program are primarily paid for by gas marketers via transaction fees. This is consistent with the principles established for the Commercial Unbundling program in 2004. At that time Terasen Gas recommended that gas marketers cover program operating costs where possible. (Terasen Gas Application, Appendix A, p. 46)

**The Commission determines that Terasen Gas should recalculate the price point charge in 2012 after the contact center services are repatriated from Accenture. The Commission agrees that the operating costs incurred by Terasen Gas to facilitate the Customer Choice program should be recovered from gas marketers.**

## **2.9 Voice Contracting for New Contracts**

Currently, voice contracting may only be used to renew expiring contracts. Discussions at the 2009 Annual General Meeting concluded that the Customer Choice Program was not mature enough to

permit voice contracting for new contracts. This issue was revisited in the AGM for 2010. (Terasen Gas Application, Appendix A, p. 47)

Just Energy believes that sufficient time has passed to allow the use of voice contracting for *new* contracts without the requirement for a wet signature. Opening this additional sales channel would offer an alternative method to contact customers and would be beneficial to customers in outlying areas. Voice contracts would be more exact as they would accurately capture the full conversation between the gas marketer and the potential customer. Similar to renewals done by voice contracts, new contracts could also follow a Commission-approved script and documentation process. (Just Energy Final Submission, p. 9)

At the AGM, Commission staff agreed with gas marketers that the introduction of voice contracting for new contracts may be appropriate at this time. Advantages may include reduced potential for coercion inherent with door-to-door sales, and access to a full script and tape of the sales transaction. Commission staff noted that Whistler could be considered for trial testing in the future, since Customer Choice is not yet available in that service area. (Terasen Gas Application, Appendix A, p. 47)

BCOAPO generally opposes voice contracting for new contracts, and instead, references Article 12 of the Code, second paragraph, which indicates that gas marketers may contact consumers by phone, then send them the paperwork to return with a wet signature. BCOAPO believes that this mechanism provides greater protection for consumers than simply having a voice over the phone. (Terasen Gas Application, Appendix A, p. 47)

**The Commission finds that if gas marketers wish to pursue this item they must collectively submit a formal application to the Commission as it is appropriate to hold a separate procedural review, including an opportunity for public participation.**

### **2.10 Internet Enrolment (Electronic Signature)**

At the AGM, Just Energy requested clarification from Commission staff regarding the definition of a web/wet signature and whether a signature obtained at the door on a hand held electronic device satisfies the wet signature requirement and whether a signature or a scanned image sent via fax to the gas marketer's place of business is sufficient to commence the enrolment process. (Just Energy Final Submission, p. 9)

Commission staff identified that in Article 12 of the Code, "either a wet signature or a signature that complies with the BC Electronic Transaction Act," would be acceptable. The Electronic Transactions Act defines electronic signature as "...information in electronic form that a person has created or adopted in order to sign a record and that is attached to or associated with the record."

**The Commission determines that no action is required for this item.**

### **2.11 Contract Maximum Term of Five Years**

Just Energy requested confirmation that Terasen Gas will be introducing the contract start and end dates on the bill and clarification of how far into an existing contract gas marketers can successfully enroll those customers into a new five-year contract. In Order A-34-10 dated November 15, 2010 Terasen Gas received approval to proceed with the proposed changes. Terasen Gas now expects the bill feature to be implemented in March 2011. (Terasen Gas Application, Appendix A, pp. 49, 50)

Regarding the five-year contracting rule, Terasen Gas provided documentation to gas marketers after the September 2010 AGM that demonstrated how the system processes contract requests under different scenarios. (Terasen Gas Final Submission, pp. 9, 10)

**The Commission finds that this item has been addressed satisfactorily.**

## 2.12 Marketer Supply Requirement (MSR) Calculation

The Marketer Supply Requirement (MSR) is a fundamental component of the Essential Services Model that underpins the Terasen Gas Customer Choice program. A separate monthly MSR is calculated for each gas marketer participating in the program that sets out the daily volume of natural gas commodity each gas marketer is required to deliver to Terasen Gas in its role as midstream services provider. For the purposes of the MSR determination, Terasen Gas, in its role as a commodity provider, is considered a marketer and therefore an MSR is calculated for Terasen Gas as well. Gas marketers make deliveries to Terasen Gas Midstream at three different supply hubs on a 100 percent load factor basis. Gas is then delivered by Terasen Gas to customers who have contracted with a gas marketer for their supply of the natural gas commodity. (Terasen Gas Application, p. 51)

Gas marketers voiced their concerns about the transparency of the forecast methodology. Terasen Gas presented a detailed overview of the methodology during the AGM in an effort to address gas marketer concerns. Terasen Gas is proposing new reports that will provide gas marketers with better supply requirement information at the premise level. These reports will be made available by the end of the second quarter of 2011.

Just Energy supports the enhanced MSR reporting proposed to provide gas marketers with premise level detail. Just Energy understands that the two new reports will be available in addition to the historical usage information already provided. However, Just Energy remains unsatisfied with the transparency of the MSR calculation methodology. Terasen Gas is of the opinion that the forecast information required to satisfy Just Energy's demand should remain confidential. (Terasen Gas Final Submission, p. 16)

Just Energy does not believe that most of the confusion regarding the MSR calculation is due to the lack of detailed premise and historical consumption and the information not being weather normalized. Just Energy weather normalizes its customer level historical consumption but still has difficulties reconciling the overall forecast change on a year to year basis. Just Energy's concern is

with the Terasen Gas overall market wide forecast and how it is divvied up by premise type, and the lack of transparency to this forecast methodology. (Just Energy Final Submission, pp. 9 - 11)

Just Energy continues to support enhanced reporting pertaining to MSR information and the receipt of any additional information which would further aid in the reconciliation of the MSR determination. Just Energy understands that the proposed information will be in addition to what is already provided to gas marketers, including all historical usage reports, and that the new reports are meant to increase understanding and allow improved reconciliation of forecast supply requirements. In addition, Just Energy supports ongoing discussions on how the MSR can be enhanced in order to provide more transparency and accuracy for gas marketers. (Just Energy Final Submission, pp. 9 - 11)

**The Commission finds that the new reports from Terasen Gas should be implemented and evaluated before consideration is given to any further changes to the MSR calculations or reporting. Parties may raise further concerns regarding the MSR at the 2011 AGM. In the event that this issue is raised at the 2011 AGM, Terasen Gas must be prepared to speak to the matter including the nature of the sensitivity of the information it states would satisfy the gas marketers' request.**

## **2.13 Communication Plan/Customer Education Plan**

### 2.13.1 Standard Information Booklet

BCOAPO is concerned that all Customer Choice documentation and information upon which this program rests is exclusively in English. Many consumers find this program, and the "pitches" made at their doorsteps, confusing enough without the added hurdle of language barriers. (BCOAPO Final Submission, pp. 2, 3)

Within the application, Terasen Gas recommended translating and printing the Standard Information booklets in Chinese and Punjabi. The BCOAPO would like to see the booklets

translated and printed in Cantonese, French, Korean, Mandarin, Persian, Punjabi, Spanish, Tagalog, and Vietnamese. Just Energy has recommended that the Standard Information booklets remain printed only in English, but have the booklets translated in other languages available on the Terasen Gas website. Terasen Gas amended its position to agree with the recommendation from Just Energy. (Terasen Gas Final Submission, p. 17)

**The Commission agrees that the Standard Information Booklet should be printed in English only and the booklet can be translated into other languages and made available on the utility's website.** This will reduce program costs and avoid the need for gas marketer agents to carry Standard Information Booklets in many languages door to door. **However, it continues to be the salesperson's responsibility to ensure the customer is fully aware of the terms and conditions, and the customer must be able to confirm this during the TPV.**

#### **2.14 Billing Issues (Program Costs and their Recovery)**

The Commission asked and considered in preparation of the AGM if gas marketers should bear more of the program costs, including the customer education component.

To ensure adequate consumer protection, it is important that all customers remain aware of the Customer Choice Program and their individual rights with respect to Consumer Agreements, not just those choosing to participate in the program at any given point in time. As such Terasen Gas believes these costs should be shared by all customers. Those customers that choose to participate in the Customer Choice Program will likely change over time. Although many customers are not enrolled in a fixed-rate commodity plan at this time, they may in the future as their life situation changes. For example those consumers moving from an active work life to retirement may seek security of a fixed-rate to avoid any unforeseen price spikes in natural gas. These individuals become more risk averse over time and may benefit from information on the fixed-rate option. (Terasen Gas Application, Appendix A, pp. 61, 62)

In Letter L-25-03 dated June 6, 2003 the Commission provided direction on the allocation of costs to commercial customers eligible to participate in the Commercial Unbundling program and to the gas marketers involved. The Letter stated "The implementation and maintenance costs will be recovered from customers in those rate classes that are eligible for the service. Annual operating costs (fixed and transactional related costs) should be recovered, to the extent possible, from marketers." Terasen Gas proposes to follow this same direction in the treatment of implementation and operating costs for the Residential Unbundling program. (Terasen Gas Application, Appendix A, p. 62)

Terasen Gas suggests that a review of deferral account activity be incorporated into the annual review process, at which time the company will recommend any necessary adjustments to the fees being charged to gas marketers. In summary, gas marketers should be responsible for the operating costs of the Customer Choice program; these costs are currently being recovered through the various gas marketer fees. (Terasen Gas Application, p. 63)

**The Commission accepts Terasen Gas's offer for it to present an assessment of proposed charges to gas marketers at the 2011 AGM.**

### **2.15 \$0 Market Groups**

Terasen Gas receives requests occasionally from gas marketers to setup \$0 marketer groups. These unusual enrolment requests serve to secure the customer in a five-year contract. The gas marketers then re-negotiate the \$0 Consumer Agreement with the customer each year. (Terasen Gas Application, Appendix A, p. 68) In essence, the contract is established for five years, but rates for the last four years are left un-negotiated.

Currently, the customer receives a confirmation letter from Terasen Gas stating they will pay a fixed rate per GJ for the first year and then \$0 for the remaining four years. This setup is problematic from a systems perspective and to the customer. From a process point of view, the second leg of the batch must be dropped before each anniversary date and a new contract

enrolment submitted with an actual rate to charge. The gas marketer then can negotiate the \$0 Consumer Agreement with the customer each year. This strategy results in the customer receiving a confirmation letter from Terasen Gas stating they will pay a fixed rate per GJ for the first year and then \$0 for the remaining four years. (Terasen Gas Application, Appendix A, p. 68)

Terasen Gas states that the Customer Choice program was not designed to accommodate this type of price structure and would require significant changes to the system infrastructure to accept this change properly. Gas marketers should employ marketing strategies to promote customer loyalty and not rely on contract blocking techniques to keep other gas marketers from taking their customers. In addition, signing shorter-term contracts would eliminate the need for the \$0 rate to address market uncertainty. Terasen recommends that \$0 marketer group requests should not be accepted. (Terasen Gas Application, p. 68)

Just Energy agrees that the practice should be banned and the existing contracts should be cancelled. (Just Energy Final Submission, p. 13)

BCOAPO fully supports the views expressed by Terasen Gas with respect to \$0 Marketer Groups as elucidated in the response to BCUC Information Request 16.1. (BCOAPO Final Submission, p. 3)

**The Commission finds that the \$0 marketer group requests are not acceptable.** The strategy promotes confusing and uncompetitive marketing practices by locking a customer in without establishing a long-term fixed rate. If a gas marketer wishes to offer shorter term fixed rate contracts, these can be offered as low as one year in duration. As this type of contracting was not applied for or approved by the Commission, **any contract currently set for \$0 per gigajoule for any term of the contract must be cancelled and re-established once a fixed rate is negotiated between the customer and the gas marketer.**

## 2.16 Costs and Approvals Associated

In its application, Terasen Gas requested the following approvals resulting from items addressed



throughout this Decision:

- Adopting several of the existing residential consumer protection practices for commercial customers. The estimated system costs are \$16,000.
- New reports: Expenditure of approximately \$15,000 to implement two new premise detail reports and make improvements to the Marketer Supply Requirement.
- Elimination of the Evergreen transaction code. The anticipated system impact costs are estimated to be \$10,000.
- Gateway for Energy Marketers (GEM) changes: Dispute ruling page changes. Expenditure of \$5,500 to adjust the page so that it includes effective dating for reimbursements; adds a field to capture additional evidence from the customer; and introduces new functionality to block enrolments dated greater than 10 years in the future.
- The Customer Education Funding previously approved for 2011 is \$300,000. Terasen Gas has proposed changes to meet this reduction to budget from 2010 levels. Terasen Gas will continue to publish price comparison ads eight times per year. Proposed changes include eliminating the newspaper wrap and display ads, and allocating all savings to radio.
- Terasen Gas requests a ruling by the Commission on the business practice of setting up \$0 Marketer Groups. (Item addressed in section 2.16)

(Terasen Gas Application, p. 3)

**The Commission approves the items and relevant costs outlined above which are associated with items addressed throughout this Decision.**

### **2.17 2011 Annual General Meeting**

Terasen Gas is of the opinion that the current annual review process for the program needs to evolve. The AGM and the resulting application made by Terasen Gas has been beneficial for customers in the past. However, the effort is time-consuming for all parties and will be of marginal value to customers in trying to improve the program if this review process were to continue. Given the fact that the program is maturing, Terasen Gas believes that the annual review process should

be scaled back. Issues that arise can be dealt with as needed. Instead, Terasen Gas could provide a simplified program summary to the BCUC and interested stakeholders each year. The Company would be willing to work with Commission staff to determine the appropriate contents of this summary report. (Terasen Gas Final Submission, p. 3)

BCOAPO submits that it is now appropriate to conduct a post-implementation review to determine whether the promises held out for the program have materialized, and whether its continuation is demonstrably in the public interest. (BCOAPO Final Submission, p. 5)

**The Commission has directed a number of actions to be reviewed at this year's AGM which we suggest should be held in September 2011. The Commission agrees that the Customer Choice program is maturing to a point where future AGMs might be unproductive and so the issue of how to address future program enhancements will be an agenda item for the 2011 AGM.**

DATED at the City of Vancouver, in the Province of British Columbia, this 31<sup>st</sup> day of May 2011.

*Original signed by:*

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L.F. KELSEY  
COMMISSIONER

*Original signed by:*

---

C.A. BROWN  
COMMISSIONER

*Original signed by:*

---

N.E. MACMURCHY  
COMMISSIONER

*Original signed by:*

---

D. MORTON  
COMMISSIONER

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BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER A-9-11

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

and

FortisBC Energy Inc.  
Customer Choice – 2010 Program Summary and Recommendations

**BEFORE:** L. F. Kelsey, Commissioner  
C.A. Brown, Commissioner  
N.E. MacMurphy, Commissioner  
D. Morton, Commissioner

May 26, 2011

## O R D E R

### WHEREAS:

- A. This matter is an application made by Terasen Gas Inc., now known as FortisBC Energy Inc. (FEI). As the application refers to a matter before the British Columbia Utilities Commission (Commission) that was filed by Terasen Gas Inc., for readability and because submissions were received from Terasen Gas Inc., the name change is not reflected throughout the Decision issued concurrently with this Order;
- B. FEI obtained approval from the Commission in 2006 for a Certificate of Public Convenience and Necessity (CPCN) for the Commodity Unbundling Project for Residential Customers (Customer Choice) in accordance with the government's 2002 energy policy which would allow for unbundling of natural gas through gas marketing companies licenced by the Commission;
- C. Policy Action #19 stated, in part, that "The Utilities Commission Act will be amended in spring 2003 to allow direct natural gas sales to low-volume customers, and to require the licensing of marketers who serve those customers." As a result, the Utilities Commission Act was amended to empower the Commission under section 71 to make rules as well as licence terms and conditions that a gas marketing company must comply with. The Commission established Rules for Gas Marketers and a Code of Conduct, both of which have been modified from time to time as a result of program enhancements;
- D. On September 8, 2010, the third Customer Choice Annual General Meeting (AGM) was held to discuss the concerns and suggestions of interested parties. Participants of the AGM included representatives of FEI, the British Columbia Old Age Pensioners' Organization et al (BCOAPO), each gas marketing company, and Commission staff;

BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER A-9-11

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- E. Subsequent to the AGM, on November 23, 2010, FEI filed an application for Customer Choice 2010 Program Summary and Recommendations (the application);
- F. By Order G-191-10 the Commission established a written hearing process to review the application and invited participants of the AGM to participate in the proceeding. Submissions were received from British Columbia Old Age Pensioners Organization et al, Cascadia Energy Limited, Direct Energy (B.C.) Limited; Just Energy (B.C.) LP, and FEI;
- G. The Commission reviewed the information and submissions made by FEI and the Registered Interveners.

**NOW THEREFORE** pursuant section 71.1 of the *Utilities Commission Act*:

1. The Commission makes the determinations and directions set out in the Decision issued with this Order. The determinations include, but are not limited to:
  - Consolidation of certain business rules for residential and commercial customers;
  - Elimination of the Evergreen Provision;
  - Rules for renewed and extended contracts; and
  - Cancellation of contracts using the \$0 marketing strategy
2. Changes to the Code of Conduct for Gas Marketers are made as a result of the Decision issued with this Order and gas marketers must ensure full compliance with these changes effective July 1, 2011, unless otherwise stated within the Decision. The Eighth Revision of the Code of Conduct effective July 1, 2011 is attached as Appendix C to the Decision.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 31<sup>st</sup> day of May 2011.

BY ORDER



D. Morton  
Commissioner

**PARTICIPANTS**

**Annual General Meeting - Participants**

Access Gas Services Inc.  
Active Renewable Marketing Ltd.  
Bluestream Energy Inc.  
Cascadia Energy Ltd.  
Connect Energy Partnership  
Direct Energy Marketing Limited  
Just Energy (B.C.) Limited Partnership  
Planet Energy (B.C.) Corp.  
Smart Energy (BC) Ltd.  
Summitt Energy BC LLP  
Superior Energy Management  
British Columbia Public Interest Advocacy Centre (BCOAPO et al)  
Terasen Gas Inc.  
BCUC Staff

**Terasen Gas Inc.  
Customer Choice 2010 Program Enhancements and Recommendations  
Registered Interveners**

Just Energy (B.C.) Limited Partnership  
British Columbia Public Interest Advocacy Centre Connect Energy (BCOAPO et al)  
Cascadia Energy Ltd.  
AltaGas Ltd.  
Direct Energy Marketing Limited  
Summitt Energy BC LLP

Submissions were received from British Columbia Old Age Pensioners Organization et al, Cascadia Energy Limited, Direct Energy (B.C.) Limited; Just Energy (B.C.) LP, and Terasen Gas Inc.

## STANDARDIZED SCRIPTS

### RESIDENTIAL TPV

*Disclaimer: The gas marketer shall terminate the call if the customer objects to the call being recorded. For points that need confirmation from the customer, a Yes/No (Y/N) is indicated at the end of the question. Gas marketers can use the term "agreement" or "contract," as appropriate.*

#### Script Preamble

##### Outbound

Good morning/afternoon/evening "CUSTOMER." My name is "TPV AGENT's NAME" and I am calling from "GAS MARKETER" to confirm the key points on the contract/agreement you recently signed with (Agent's name OR one of our agents).

This call is the final step before your enrollment with "GAS MARKETER" is completed. We record this call on behalf of the BC Utilities Commission. The Commission will use the information gathered in this verification call to rule on any disagreement that may arise in the future.

##### Inbound

My name is (TPV AGENT's NAME). Thank you for calling "GAS MARKETER" to confirm the key points on the contract/agreement you recently signed with (Agent's name OR one of our agents).

This call is the final step before your enrollment with "GAS MARKETER" is completed. We record this call on behalf of the BC Utilities Commission. The Commission will use the information gathered in this verification call to rule on any disagreement that may arise in the future.

1. I understand your full name is ... Is this correct?
2. Our records show that you signed the contract/agreement more than 24 hours ago, on "DATE."  
Do you agree? Y/N
  - 2a. Unfortunately, your enrollment with "GAS MARKETER" cannot continue as it has been less than 24 hours since you signed the agreement. To proceed with the enrollment we will contact you in "X" days or you have the option to call us back at "PHONE NUMBER."

3. Have you been left with a copy of your signed contract/agreement?

If no – the call shall be terminated

If yes – would you like to get your copy of the contract/agreement for reference? Y/N  
(Must be permitted)

4. Are you the FortisBC account holder? Y/N

If no – are you the spouse or legally authorized to enter into a contract/agreement for this residence/premise on behalf of the account holder? Y/N

5. Do you understand that "GAS MARKETER" is completely independent of FortisBC or the government and entering into a contract/agreement with our company is entirely voluntary? Y/N
6. Do you understand that "GAS MARKETER" will become your natural gas supplier and FortisBC will remain responsible for invoicing, emergency service, and delivery? Y/N
7. Do you understand that we will be supplying your natural gas at a fixed rate of "PRICE" for a term of "TERM" years? Y/N

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7a. I have a record that you selected our green energy option for an additional "GREEN ENERGY PRICE" per gigajoule. Your green energy charge will be included in your Cost of Gas on your bill from FortisBC. Do you understand that your total fixed price will be "TOTAL PRICE" per gigajoule? Y/N

8. Do you understand that by signing a fixed rate contract/agreement, you may not save money? Y/N
9. Did you receive a copy of the Standard Information Booklet entitled "It's Your Choice"? Y/N

This booklet is also available on the FortisBC and BC Utilities Commission websites.

10. You have 10 days to cancel this contract/agreement without penalty. Following your 10-day cancellation period, you can only make a request to cancel your contract/agreement on its anniversary date and you will be responsible for early termination fees. Do you understand your cancellation rights? Y/N
11. You will receive a letter from FortisBC confirming your enrollment with "GAS MARKETER."

Thank you for your time and if you have questions please contact us at the contact information provided on your contract/agreement. We recommend that you review the terms and conditions of your contract/agreement and read the "It's Your Choice" booklet before your 10-day cancellation period expires.



### COMMERCIAL TPV – RATE SCHEDULES 2 & 3

The topics of the script to be addressed individually are:

1. Identification of the gas marketer as an independent supplier and not affiliated with the local utility or the government.
2. Collect basic information:
  - a. Full business name
  - b. Full signee name
  - c. Title/Position
  - d. Number of locations to be signed up
3. **Signing Authority** –does the signee have the authority to bind agreements for the organization? To be answered with **Yes** or **No**. If in doubt, proceed with one of the questions below:
  - a. Is there a more senior individual that the marketer should speak to regarding the decision on the agreement? Y/N
  - b. Have you entered into long term, financially binding agreements on behalf of the company in the past? Y/N
4. Confirmation that the Consumer has a copy of the Gas Marketer agreement and that the Consumer understands that he is entering into a binding agreement for the supply of energy for the company.
5. Confirmation of the price and term.
6. If the customer chose a green energy option, confirmation of the price, the fact that it will be included in the commodity charge on the utility bill, and the cancellation rights for the green option.
7. Confirmation that the customer understands the 10 day cancellation window, or if the customer waived the right, confirmation that the customers has done so.
8. Confirmation that the customer understands that the agreement may not save money.

CODE OF CONDUCT  
for  
GAS MARKETERS  
engaged in the  
COMMODITY UNBUNDLING SERVICE  
IN THE PROVINCE OF BRITISH COLUMBIA

Eighth Revision  
Effective July 1, 2011

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**CODE OF CONDUCT**  
**for GAS MARKETERS**  
**engaged in the**  
**COMMODITY UNBUNDLING SERVICE**  
**IN THE PROVINCE OF BRITISH COLUMBIA**

**Eighth Revision**  
**Effective July 1, 2011**

**INTRODUCTION**

Marketing of natural gas under the Commodity Unbundling Service takes place usually, though not exclusively, in a Consumer's place of business or home, by personal contact, or via telephone or internet marketing. Marketing of Gas under the Commodity Unbundling Service involves several parties including Gas Marketers, utilities and the Consumer of the Gas. The relationship between the various parties must be based on fair and ethical principles.

**SCOPE**

The purpose of this Code is to foster and uphold a sense of responsibility towards the Consumer and towards the general public by all those engaged in the Marketing of Gas to Low Volume Consumers participating in the Commodity Unbundling Service in the Province of British Columbia.

The Code applies to all practices used in the Marketing of Gas under the Commodity Unbundling Service for both residential and commercial Consumers. Where the practices are different between residential and commercial Consumers, it is noted.

The Code is to be applied in spirit as well as to the letter, bearing in mind the varying degrees of knowledge, experience and discriminatory ability of Consumers.

**BASIC PRINCIPLES**

All Marketing of Gas under the Commodity Unbundling Service will conform to the principles of fair competition as generally accepted in business, with particular regard to:

- the terms of the offer and the methods and form of the contact with the Consumer;
- the methods of presentation and the information on the supply; and
- the fulfilment of any obligation arising from the offer of purchase of Gas under the Commodity Unbundling Service.

Marketing of Gas under the Commodity Unbundling Service will be carried out in conformity with the laws of Canada and its provinces, where applicable.

Gas Marketers shall voluntarily assume responsibility towards the Consumer with respect to fair sales methods, accurate and truthful dissemination of information, and product value, and shall make every reasonable effort to ensure Consumer satisfaction.

Gas Marketers shall ensure that their Salespersons are fully informed as to the characteristics of the gas supplies and/or services offered to enable them to give the Consumer all necessary information to make informed decisions.

### **DEFINITIONS**

For the purpose of this Code:

- **Act** means the Utilities Commission Act of British Columbia as amended from time to time.
- **Cancellation Period** is period within which the Consumer can cancel the Customer Agreement with no penalty incurred, being 10 calendar days from the date the enrolment is received by the Utility from the Gas Marketer. This will generally coincide with the date of the FortisBC confirmation letter to the Consumer.
- **Code** means this Code of Conduct for Gas Marketers.
- **Commission** means the British Columbia Utilities Commission.
- **Commodity Unbundling Service** is defined as the series of transactions involving the sale of gas by a Gas Marketer to a Gas utility for resale to a Low Volume Consumer arranged by Gas Marketer at a price agreed to between the Gas Marketer and the Low Volume Consumer.
- **Consumer** refers to any person or entity to which Gas Marketers direct or may direct their Gas Marketing activities under the Commodity Unbundling Service and includes both Consumers contracted with Gas Marketers or Consumers being supplied by a utility. Consumers include Residential and Commercial as defined by the local utility offering the Commodity Unbundling Service.
- **Consumer's Agreement(s)** means all written agreements and contracts between a Gas Marketer and a Consumer for the Marketing of Gas.
- **Consumer Information** means information relating to a specific Consumer obtained by a Gas Marketer or its Salesperson in the process of selling or offering to sell Gas to the Consumer, and includes information obtained without the consent of the Consumer.
- **Day(s)** means a calendar day(s) unless otherwise indicated.
- **End User** is an entity or person who utilizes Gas either as fuel or a raw material.
- **Enrolment** is the act of submitting the Consumer's Agreement to the LDC once it has been signed and verified by Third Party Verification in accordance with this Code.

- **Gas** means natural gas, substitute natural gas, synthetic gas, manufactured gas, propane-air gas or any mixture of any of them.
- **Gas Marketer** means an entity licensed by the Commission to engage in Gas Marketing to Low Volume Consumers under the Commodity Unbundling Service.
- **License** means a license issued under the Act by the Commission for the Marketing of Gas by a Gas Marketer to a Low Volume Consumer.
- **Licensed** means a person or entity holding a current valid License.
- **Local Distribution Company (LDC; Utility)** is a person/company enfranchised to distribute Gas within a defined territory.
- **Low Volume Consumer** – as defined by the Commission pursuant to section 71.1 of the Act. A “low-volume consumer” is defined as a person who, for the applicable period, either:
  - has, or is expected to have, a normalized annual consumption at one premise of less than 2,000 gigajoules of Gas per year; or
  - has chosen the Commodity Unbundling Service supply option, whatever the person’s annual consumption of Gas.
- **Marketing** for the purpose of this Code, means any activities intended to solicit a Consumer or potential Consumer to contract with a Gas Marketer, including providing for a Consumer’s consideration an Offer, and is characterized by door-to-door selling, internet, telemarketing, direct mail selling activities, and any other means by which a Gas Marketer or its Salesperson interacts directly with a Gas Consumer or potential Gas Consumer.
- **Offer** means a proposal to enter into an agreement made to an existing or prospective Consumer for the sale of Gas.
- **Premise** means the building or portion of a building that is provided with Gas through a single meter.
- **Renewal** is the replacement of an existing contract with a further contract with the same Gas Marketer which will have a new term; may have a different price than the Consumer’s previous contract; and may also include revisions as a result of changes in law, the Code of Conduct or Rules for Gas Marketers.
- **Regulation** means a regulation made under the Act.
- **Salesperson** means a person who is employed by or otherwise conducts Marketing and/or Third Party Verification on behalf of a licensed Gas Marketer, or makes representations to Consumers on behalf of a Gas Marketer for the purpose of effecting sales of Gas to Low-Volume Consumers.
- **Third Party** with respect to Confidentiality of Consumer’s Agreements, means a person other than the Gas Marketer, and includes other Gas Marketers, affiliates, Consumers and other persons.
- **Third Party Verification (TPV)** is a digitally recorded telephone call between the Gas Marketer and the Residential Consumer to confirm the Consumer’s understanding of the Offer, Consumer’s Agreements, Confirmation Letter and Cancellation Rights.

## THE TERMS OF THE CONSUMER'S AGREEMENTS AND THE OFFER

### Accuracy

#### Article 1

The terms of any Offer and Consumer's Agreements shall be clear, so that the Consumer shall know the nature of the product and the benefits, the commitment and risks involved in agreeing to contract for Gas with the Gas Marketer. In particular, but without limiting the generality of the foregoing, any Offer and Consumer's Agreements will be accurate and truthful as to any representation made as to price, delivery arrangements, payment terms and conditions, quality and value of services, and quantity and performance and warranty conditions.

### Price and Other Terms

#### Article 2

Whether an Offer is on cash or any other basis, the Offer and Consumer's Agreements shall clearly state the price and payment terms and any other financial provisions, including any deposit requirement, allocation of cost savings and/or services, and the nature and amount of any additional charges. The Offer and Consumer's Agreements shall clearly state agreement renewal provisions including default rollover provisions.

The Gas supply price must be a fixed price for 12 month intervals expressed in Canadian dollars per gigajoule. This price shall only apply to the sale of Gas and shall not include provision of other services.

If any other term or condition is subject to re-determination, indexation or arbitration, the Offer shall so state.

All Offers shall contain clear statements as to the quantities of Gas to be purchased, intended start-up and delivery dates, and the term of the agreement. The term shall not be less than one year or more than five years in length.

The Consumer's Agreements shall accurately and fully reflect the terms and conditions of the Offer as accepted by the Consumer.

No Offer shall require a sign-up fee to be taken in order to initiate a purchase of natural Gas arrangement under the Commodity Unbundling Service.



## **Obligations and Liabilities**

### Article 3

The Offer and Consumer's Agreements shall state the respective obligations, liabilities and risks of the Gas Marketer and Consumer in clear and understandable terms so that the Consumer may be sufficiently informed to understand them prior to executing Consumer's Agreements.

The Gas Marketer shall confirm with the Consumer that the Consumer has the signing authority to enter into the Consumer Agreement.

## **Protection**

### Article 4

This Code shall be interpreted in accordance with all applicable federal and provincial Consumer protection and business practice legislation.

## **Guarantees**

### Article 5

Offers and Consumer's Agreements may contain the words "guarantee", "guaranteed", "warranty" or "warranted", or words having the same or similar meanings, only if the terms of the guarantee as well as the remedial action open to the Consumer are clearly and succinctly set out in the Offer and Consumer's Agreements. Any such guarantee shall in no way diminish the rights which a purchaser would otherwise enjoy under Canadian or applicable provincial laws. The name and address of the guarantor shall be clearly and fully stated.

## **PRESENTATION OF THE OFFER**

### **Identity of the Gas Marketer**

#### Article 6

The name, permanent address, main British Columbia office address and the telephone number, fax number, e-mail and website addresses of the Gas Marketer shall be clearly and fully disclosed in any Marketing document or other Marketing literature distributed to the Consumer, including the Consumer's Agreements, so as to enable the Consumer to remain in touch directly with the Gas Marketer. Marketing documents and other literature containing only an accommodation address or a post office box number are not acceptable.

### Article 7

All Salespersons shall immediately, truthfully and fully identify themselves and provide proof of licensing and bonding, to prospective Consumers. They shall also truthfully and fully indicate the purpose of their approach to the Consumers, identify the Gas Marketer with whom they are associated and indicate that they are Marketing Gas under the Commodity Unbundling Service.

### Article 8

Neither a Gas Marketer nor any Salesperson shall mislead or otherwise create any confusion in the mind of a Consumer about the identity of the represented Gas Marketer, its promotion campaigns or trade mark, or those of competitors and/or LDCs.

Specifically, a Gas Marketer or any Salesperson when marketing a supply contract to a Consumer shall state that they are not representing the Consumer's local distribution company.

## **Integrity**

### Article 9

Salespersons shall in good faith assist Consumers to evaluate the nature of the transactions. Marketing efforts shall be organized and carried out so as not to:

- create confusion in the mind of the Consumer;
- mislead the Consumer or misrepresent any aspect of the Offer or Consumer's Agreements;
- abuse the trust of the Consumer;
- unduly pressure or harass the Consumer to enter into transactions; and
- exploit the lack of experience and knowledge of the Consumer.

## **Clarity**

### Article 10

Gas Marketers and Salespersons shall ensure that all terms of any Offer or Consumer's Agreements are communicated to the Consumer in writing in a clear, complete, accurate and understandable manner. Print which by its size or other visual characteristics is likely to negatively affect the legibility or clarity of any Offer or Consumer's Agreements, shall not be used.

## Truthful Presentation

### Article 11

The characteristics of any transaction shall include:

- price, deposit, credit and rebate terms;
- terms of payment and frequency;
- the beginning and end dates of the agreement;
- identity of and accessibility to the Gas Marketer;
- process for making a complaint to or enquiry of the Gas Marketer;
- delivery terms and conditions, during-and after-sales services;
- sources and reliability of supplies;
- terms of guarantee and warranty;
- liabilities and obligations of the Gas Marketer and Consumer;
- benefits/risks to Consumer;
- awards, bonuses, prizes, discounts and other incentives with respect to the Offer and Consumer's Agreements;
- Consumer's entitlement to receive a copy of this Code from the Gas Marketer;
- Consumer's entitlement to receive a copy of the Customer Choice Standard Information Booklet from the Gas Marketer;
- reasons for which the agreement may be terminated by the Gas Marketer;
- for Commercial Consumers, that the agreement is made with respect to the Consumer's Premise and terminates in the event the Consumer moves;
- for Residential Consumers, that the agreement is made with respect to the Consumer at the Consumer's Premise and in the event the Residential Consumer moves, the Consumer's Agreements will apply to the Consumer at their new Premise, provided that the new Premise is served with natural gas and that it is in an eligible service territory of the Utility providing the Commodity Unbundling Service;
- for Commercial Consumers, cancellation rights of the Consumer including a mandatory 10 day Cancellation Period; a Gas Marketer must not submit a Consumer enrolment to the LDC for processing until the 10 day Cancellation Period has expired. For Commercial Consumers, a 10 day Cancellation Period will not apply in the case of a single Commercial Consumer whose aggregate annual volume exceeds 2,000 gigajoules per year at one or more premises and who has provided written consent to the gas marketer to waive the 10 day Cancellation Period;
- for Residential Consumers, all cancellation provisions, for the purposes of the Commodity Unbundling Service;

- rights under the Consumer's Agreements with respect to assignments, transfers and sales to another Gas Marketer;
- any deposit, exit, late fees or any other charges payable to the Gas Marketer, if applicable;
- any other information required to be provided to the Consumer by Canadian or applicable provincial law; and
- all other terms of the Offer and Consumer's Agreements shall be presented completely, accurately and truthfully.

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## Telephone, Door to Door and Internet Marketing

### Article 12

#### Telephone and Door to Door Marketing

When conducting telephone or door to door Marketing, the Gas Marketer shall comply with applicable laws. All telephone and door to door contacts must be made 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. Salespersons must immediately, truthfully and fully identify themselves to the prospective Consumers. They shall also immediately, truthfully and fully indicate the purpose of their approach to the Consumers, identify the Gas Marketer with whom they are associated and indicate that they are selling Gas under the Commodity Unbundling Service.

For telephone marketing, in the event that a recorded message constitutes a portion, or all of the sales process, the caller must first personally obtain the consent of the recipient to play a recorded offer. The Gas Marketer shall forward a written agreement to sign-up for service by telephone marketing and obtain from the Consumer a signed agreement in return. The Gas Marketer shall direct the LDC to switch the Consumer's Gas supply only once the Gas Marketer is in possession of the signed agreement from the Consumer.

#### Internet Marketing

The Gas Marketer shall forward a written agreement to sign-up for service by Internet marketing and obtain from the Consumer a signed agreement in return or obtain an electronic signature which complies with the B.C. Electronic Transactions Act. The Gas Marketer shall direct the LDC to switch the Consumer's Gas supply only once the Gas Marketer is in possession of the signed agreement from the Consumer. Electronic signatures which comply with the B.C. Electronic Transactions Act shall be accepted for Consumers committing to new agreements and for the renewal of existing agreements.

## **Complaints and Dispute Resolutions**

### Article 13

Should any Consumer complain that a Gas Marketer or Salesperson has engaged in any improper course of conduct pertaining to Marketing under the Commodity Unbundling Service, the Gas Marketer shall promptly investigate the complaint and take all appropriate and necessary steps in the circumstances to redress any and all wrongs disclosed by such investigation.

All Consumer's Agreements will include a provision that all disputes between the Gas Marketer and a Consumer arising out of the contract will be referred to and resolved by arbitration administered by the Commission or other body appointed by the Commission for purpose of resolving such disputes and conducted according to the Commission's rules for the resolution of such disputes. The Gas Marketer shall pay a dispute resolution fee for each dispute referred to the Commission as determined by the Commission, except for a dispute where the Commission determines that the Consumer will be solely responsible for the dispute resolution fee.

All evidence in a dispute must be uploaded in the GEM system by the end of the ninth day following the initial logging of the dispute in GEM. This includes evidence provided by customers and by Gas Marketers. No evidence will be accepted for a dispute if received after the ninth day outstanding in GEM. If information is to be considered after this deadline, the party must submit a request for reconsideration in accordance with BCUC procedures.

Minimum evidence to be filed by a Gas Marketer includes the Consumer's Agreement, Notice of Appointment of Marketer, and Third Party Verification Recording for Consumer's Agreements signed after July 1, 2007.

## **SALESPERSON OPERATIONS**

### **Respect of Privacy**

#### Article 14

Marketing shall not be intrusive, aggressive, or harassing in nature. Marketing activity (excluding online Marketing) shall be limited to between Monday to Friday between the hours of 9:00 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. Posted signs restricting and/or prohibiting marketing and soliciting must be respected.

### **Honesty, Fairness and Veracity**

#### Article 15

A Salesperson shall not abuse the trust of individual Consumers or exploit their lack of experience or knowledge, nor play on ignorance or on fear, thereby exerting undue pressure on Consumers. All Offers must, therefore, be clear and honest.

A Salesperson shall not make any statement or take any measure which, directly or by implication, omission, ambiguity or exaggeration, is likely to mislead a Consumer with regard to the benefits of the Program, terms of the Offer, Consumer's Agreements or any other matter.

The Gas Marketer may not request that the Consumer provide their FortisBC account information, including their bill, until the Consumer expresses intent to enter into the Consumer Agreement.

A Salesperson shall, to the best of his or her knowledge and ability, give complete, accurate and clear answers to a Consumer's questions concerning the Offer or any other matter.

#### Article 16

A Salesperson shall ensure that the Consumers clearly and thoroughly understand the information given. The demonstration or explanation of the transaction under the Commodity Unbundling Service shall, as far as possible, be adapted to the needs and enquiries of the Consumers.

A Salesperson shall give sufficient time for Consumers to read the entire contract form thoughtfully and without interruption or harassment. Where a language or comprehension issue is likely to impede the Consumer's ability to fully understand the offer and the transactions, the Salesperson shall not execute the Consumer Agreement(s) and/or the Third Party Verification.

A Salesperson shall not make any verbal representations regarding agreements, rights or obligation unless those representations are contained in the Consumer's Agreements.

Gas Marketers shall ensure that their Salespersons are generally knowledgeable in the natural gas business, fully informed as to the characteristics of gas supplies and/or services offered and the Consumer's Agreement utilized by the Marketer, to enable them to give the Consumer all necessary information to make informed decisions.

A Salesperson shall ensure that the Consumer has been provided with a copy of the Customer Choice Standard Information Booklet and shall advise the Consumer to fully review the information contained within before the expiration of the 10 day cancellation period. A Salesperson shall provide a copy of the Customer Choice Standard Information Booklet to a potential Consumer, when requested, even if that Consumer decides not to enter into a Consumer Agreement with that Salesperson at that time.

### **Testimonials and Endorsements**

#### Article 17

A Salesperson shall not refer to any testimonial, endorsement, or customer experience which is:

- not authorized by the person quoted, if in a private capacity;
- not genuine or unrelated to the experience of the person giving it;
- obsolete or otherwise no longer applicable;

- taken out of context; or
- used in any way likely to mislead the Consumer.

### **Comparisons and Fair Competition**

#### Article 18

A Salesperson shall refrain from using comparisons, statistics, and visual material which might mislead and/or which are incompatible with the principles of fair competition. Points of comparison shall be fairly selected and shall be based on facts which can be substantiated. All comparisons, statistics, and visual material must be clearly and accurately labelled.

All comparisons, statistics, and visual material that are provided to a Consumer must be actual data obtained from the LDC and based only on actual data for British Columbia.

All statements or promises made in any promotional material must be complete and in accordance with actual conditions, situations and circumstances existing at the time the promotion is made. Any data referred to must be competent and reliable and support the specific claim for which it is cited. Illustrations of historical data based on past records of more than five years are not permitted, and no projections of future pricing may be presented to the Consumer.

#### Article 19

A Salesperson shall not discredit any competing company, firm or individual, or any supplies or services provided by such parties, directly or by implication. Accurate, complete and truthful comparisons, however, are acceptable. When price comparisons are used, they must be factual, complete and verifiable.

#### Article 20

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

#### Article 21

A Salesperson shall not take unfair advantage of the goodwill attached to the trade name or symbol of another Gas Marketer or product.

A Salesperson shall clearly indicate that the Offer is not being made by a regulated Gas distributor, and not seek to mislead or otherwise create any confusion in the mind of a Consumer about the identity of the Gas Marketer, or about the trademarks of the regulated distributor or of competitors.

#### Article 22

A Gas Marketer shall not engage in any false or misleading advertising or publish any material which may have the effect of misleading potential Consumers.

## CONSUMER INFORMATION

### Information to be maintained by a Gas Marketer

#### Article 23

A Gas Marketer shall have a current telephone number listed in British Columbia which may be reached by the general public without charge and shall provide it to every Consumer.

A Gas Marketer shall maintain on file and provide such information to the Commission upon request:

- A list of all Salespersons and sub-contractors who act for that Gas Marketer;
- A list of Consumers;
- A log of cancellation requests, including confirmation numbers provided to Consumers and the name or identification number of the representative who accepted the request for cancellation;
- The Notices of Appointment of Marketer signed by its Consumers;
- Copies of the Gas Marketer's supply contract with each Consumer containing the Consumer's written signature; and
- Copies of the Commercial Consumer's written consent waiving the 10 day Cancellation Period.

In addition, the LDC has a right to audit any Notices of Appointment of Marketers and the Gas Marketer's supply contract with each Consumer by providing prior written notice of five business days to a Gas Marketer.

### Request for Historical Gas Consumption Information

#### Article 24

Prior to submitting a request to the LDC for a Consumer's historical gas consumption data, a Gas Marketer must obtain the Consumer's signature on a consent form and provide a copy of this signed consent form to the LDC.

### Confidentiality of Consumer Information

#### Article 25

A Gas Marketer must comply with the Personal Information Protection Act requirements of British Columbia.



A Gas Marketer shall not disclose Consumer information without the consent of the Consumer in writing, except where the Consumer information is required to be disclosed for the following purposes:

- For billing, collections or Gas supply management purposes (i.e. consumption information);
- For law enforcement purposes;
- For the purpose of complying with a legal requirement or an order of a regulatory body exercising jurisdiction over the Gas Marketer or the Consumer;
- For the processing of past due accounts of the Consumer which have been passed to a debt collection agency; or
- In the event that a Gas Marketer assigns, sells or transfers its list of Consumers and its existing agreements with Consumers to another licensed Gas Marketer.

Consumer information may be disclosed where the information has been sufficiently aggregated such that an individual's information cannot reasonably be identified.

A Gas Marketer shall inform Consumers that information may be released to a Third Party without the Consumer's consent for the purposes listed above.

A Gas Marketer shall not use Consumer information for one purpose from a Consumer for any other purpose without the written consent of the Consumer.

## **AGREEMENTS AND CONTRACTS**

### **Agreement Specifications**

#### Article 26

The Consumer's Agreements, in accompaniment with the Notice of Appointment of Marketer, will be clearly designated as an "Agreement" or a "Contract". The terms "Application" or "Enrollment" do not accurately reflect the agreement made between the Marketer and the Consumer. There should be no confusion in the mind of the customer that this is a binding contract and not an application or enrollment.

The agreement must include Title next to Consumer's Name as part of the confirmation that the Consumer has the signing authority to enter into the agreement. For Residential Consumers, the signatory may be the account holder, the spouse, or a legally authorized representative. For Commercial Consumers, the signatory must confirm the authority to sign on behalf of the company.

The Consumer's right to cancel without penalty must be referred to as the "Ten Day Cancellation" provision and must be clearly stated in the Consumer's Agreement, prominently situated above the Consumer's signature line. Instructions must be included on how the Consumer can exercise this option.

The first page of the agreement between the Gas Marketer and a Consumer must accurately summarize and clearly state the essential elements of the Offer including:

- Price (Canadian \$ per gigajoule);
- Term (length in years, start and end dates);
- Renewal provisions (type, frequency, dates) including default rollover provisions;
- Cancellation provisions, including the option for an eligible Rate Schedule 2 or Rate Schedule 3 customer to waive the 10-day cancellation period with the Consumer's signature for consent;
- Penalties and terms for early termination of the contract, including minimum contract term, and the requirement that the Consumer's Agreements may only be terminated on their anniversary date; and
- Conditions which may affect the price or term of the Offer.

The Consumer's Agreements must also include a fill-in date (beside the Consumer's signature) for the Consumer to complete at the time the contract or agreement is signed.

The minimum contract term is one year with a maximum contract term of no more than five years and the dates for commencement of service and termination of service must coincide with program entry dates.

A Consumer may enter into an Agreement with any Gas Marketer, or a combination of Gas Marketers, for a maximum period of five years of gas flow.

### **Agreement Renewals**

#### Article 27

The Consumer's Agreements should clearly set out the contract renewal provisions.

- The renewal date shall be such that it coincides with a LDC program entry date. Notice periods for contract renewal should require the Gas Marketer to give notice to the Consumer no less than 90 days prior to the applicable renewal date.
- The Consumer shall have 30 days after receipt of written notice from the Gas Marketer to select renewal terms or cancel the contract.
- The timing of notices need to align with notice periods on entry dates to permit a Consumer to change Gas Marketers upon expiry or cancellation of an existing agreement.
- In instances where a Consumer is responding in writing to written material which is fully compliant with the Code of Conduct, a Third Party Verification call is not required.
- In case of acceptance, the renewal package and acceptance of a renewal offer must be provided to and obtained from the account holder.

In situations where one contract is being cancelled on an anniversary date of the original agreement and another is being implemented for an extended term, the offer must comply with the Renewal Provisions. Since a new enrolment will automatically trigger a confirmation letter notifying the Consumer of the 10-day

## **APPENDIX C**

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cancellation period, if the Consumer elects to use this cancellation period, the original contract will be reinstated.

If the Consumer has cancelled its agreement and wishes to return to Utility supply, the Gas Marketer must notify the LDC within two business days of receiving notice from the Consumer.

### **Cancellation of Agreements**

#### Article 28

A Gas Marketer shall accept a Consumer's request for cancellation when within the 10 day Cancellation Period, and under the terms of the contract without engaging in further sales or marketing activity under that Consumer's Agreement.

A Gas Marketer shall accept a Consumer's request for cancellation when within the Cancellation Period without making the process onerous on the Consumer. The Consumer must be able to exercise their rights under the Cancellation Period by telephone, facsimile, email, or mail.

When exercising a Cancellation Provision to cancel the Consumer's Agreement at the anniversary date of the Consumer's Agreement, the Consumer may provide written notice to the Gas Marketer at any time prior to the 60 days before the anniversary date of the Consumer's Agreement.

### **Transfer of Agreements**

#### Article 29

A Gas Marketer shall not assign, sell or otherwise transfer the Consumer's Agreements to another person who is not a licensed Gas Marketer.

Within 30 days of assignment, sale or transfer of the administration of an agreement to another licensed Gas Marketer, the affected Consumer must be notified of the new Gas Marketer's address for service, telephone number and the Consumer complaints process, if these have changed.

The assignment, sale or transfer of a Gas Marketer's Consumer's Agreements to another Gas Marketer shall be approved in advance by the Commission.

### **Responsibility for Code Observance**

#### Article 30

The primary responsibility for the observance of this Code and associated Commission Orders rests with the Gas Marketer. Failure to comply with, or breach of, the Code and/or associated Commission Orders, 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.

#### Article 31

The Utility shall refrain from conducting business with anyone who is not licensed in the province of British Columbia and does not strictly adhere to this Code.

### **Third Party Verification**

#### Article 32

Third Party Verification (TPV) is the form of a digitally recorded telephone call either initiated as an outbound call from the Gas Marketer to the Consumer or as an inbound call from the Consumer.

For Residential and Rate 2 Schedule customers, the TPV call must not occur until 24 hours after the Consumer executes the contract, and in order to complete the sale, must occur within ten calendar days of the Consumer executing the contract. The Consumer who signed the contract with a Gas Marketer must confirm their understanding of the key elements of the agreement through a TPV call. The sales representative is not permitted to be on the premise during the TPV call with a residential or Rate Schedule 2 customer.

Rate Schedule 3 customers are exempt from the 24 hour TPV waiting period; these Consumers are permitted to complete the TPV immediately upon execution of the contract, and must occur within 10 calendar days after the Consumer executing the contract.

The call must be completed before the Consumer's enrolment is submitted to the LDC. The digital file will be available for the Commission three days after the initial recording and retained by the Gas Marketer for the term of the Consumer's Agreement.

#### **Residential Consumers**

For Residential Consumers, the TPV call must follow the standardized scripting set out below. The Commission will not allow additions or deviations from the standardized script at this time. If Gas Marketers wish to request an amendment to a technical detail, they can apply to the Commission.

*Disclaimer: The gas marketer shall terminate the call if the customer objects to the call being recorded. For points that need confirmation from the customer, a Yes/No (Y/N) is indicated at the end of the question. Gas marketers can use the term "agreement" or "contract," as appropriate.*

**Script Preamble**

Outbound

Good morning/afternoon/evening "CUSTOMER." My name is "TPV AGENT's NAME" and I am calling from "GAS MARKETER" to confirm the key points on the contract/agreement you recently signed with (Agent's name OR one of our agents).

This call is the final step before your enrollment with "GAS MARKETER" is completed. We record this call on behalf of the BC Utilities Commission. The Commission will use the information gathered in this verification call to rule on any disagreement that may arise in the future.

Inbound

My name is (TPV AGENT's NAME). Thank you for calling "GAS MARKETER" to confirm the key points on the contract/agreement you recently signed with (Agent's name OR one of our agents).

This call is the final step before your enrollment with "GAS MARKETER" is completed. We record this call on behalf of the BC Utilities Commission. The Commission will use the information gathered in this verification call to rule on any disagreement that may arise in the future.

1. I understand your full name is ... Is this correct?
2. Our records show that you signed the contract/agreement more than 24 hours ago, on "DATE". Do you agree? Y/N
  - a. Unfortunately, your enrollment with "GAS MARKETER" cannot continue as it has been less than 24 hours since you signed the agreement. To proceed with the enrollment we will contact you in "X" days or you have the option to call us back at "PHONE NUMBER."
3. Have you been left with a copy of your signed contract/agreement?  
If no – the call shall be terminated  
If yes – would you like to get your copy of the contract/agreement for reference?  
Y/N  
(Must be permitted)
4. Are you the FortisBC account holder? Y/N  
If no – are you the spouse or legally authorized to enter into a contract/agreement for this residence/premise on behalf of the account holder? Y/N
5. Do you understand that "GAS MARKETER" is completely independent of FortisBC or the government and entering into a contract/agreement with our company is entirely voluntary? Y/N
6. Do you understand that "GAS MARKETER" will become your natural gas supplier and FortisBC will remain responsible for invoicing, emergency service, and delivery? Y/N

7. Do you understand that we will be supplying your natural gas at a fixed rate of “PRICE” for a term of “TERM” years? Y/N
  - a. I have a record that you selected our green energy option for an additional “GREEN ENERGY PRICE”. Your green energy charge will be included in your Cost of Gas on your bill from FortisBC. Do you understand that your total fixed price will be “TOTAL PRICE” Y/N
8. Do you understand that by signing a fixed rate contract/agreement, you may not save money? Y/N
9. Did you receive a copy of the Standard Information Booklet entitled “It’s Your Choice”? Y/N

This booklet is also available on the FortisBC and BC Utilities Commission websites.

10. You have 10 days to cancel this contract/agreement without penalty. Following your 10-day cancellation period, you can only make a request to cancel your contract/agreement on its anniversary date and you will be responsible for early termination fees. Do you understand your cancellation rights? Y/N
11. You will receive a letter from FortisBC confirming your enrollment with “GAS MARKETER.”

Thank you for your time and if you have questions please contact us at the contact information provided on your contract/agreement. We recommend that you review the terms and conditions of your contract/agreement and read the “It’s Your Choice” booklet before your 10-day cancellation period expires.

### Commercial Consumers

For Rate Schedule 2 and Rate Schedule 3 customers, the TPV will cover the topics specified by the Commission for this purpose, and will be sent to the Commission for comments prior to implementation. A list containing the major topics to be included in the script is detailed below and it is up to the Gas Marketer to arrange the script. The topics must be addressed individually and where the topic calls for confirmation, the Consumer must so confirm.

1. Identification of the gas marketer as an independent supplier and not affiliated with the local utility or the government.
2. Collect basic information:
  - a. Full business name
  - b. Full signee name
  - c. Title/Position
  - d. Number of locations to be signed up
3. **Signing Authority** –does the signee have the authority to bind agreements for the organization? To be answered with **Yes** or **No**. If in doubt, proceed with one of the questions below:
  - a. Is there a more senior individual that the marketer should speak to regarding the decision on the agreement? Y/N

- b. Have you entered into long term, financially binding agreements on behalf of the company in the past? Y/N
4. Confirmation that the Consumer has a copy of the Gas Marketer agreement and that the Consumer understands that he is entering into a binding agreement for the supply of energy for the company.
5. Confirmation of the price and term.
6. If customer chose a green energy option, confirmation of the price, the fact that it will be included in the commodity charge on the utility bill, and the cancellation rights for the green option.
7. Confirmation that the customer understands the 10 day cancellation window, or if the customer waived the right, confirmation that the customers has done so.
8. Confirmation that the customer understands that the agreement may not save money.

#### **Modification to the Code**

##### Article 33

The Code shall be reviewed and modified if required at an annual meeting established by the Commission. Modifications to the Code are subject to the approval of the Commission.