



**IN THE MATTER OF**

**FORTISBC ENERGY INC.**

**2014 CUSTOMER CHOICE  
SEVENTH ANNUAL GENERAL MEETING**

**DECISION**

**September 29, 2015**

**Before:**

**D. A. Cote, Commissioner / Panel Chair**

**H. G. Harowitz, Commissioner**

**I. F. MacPhail, Commissioner**

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### ORDER A-12-15

#### APPENDIX A – Code of Conduct for Gas Marketers: Ninth Revision

#### APPENDIX B – Unopposed Changes to Code of Conduct for Gas Marketers

## **1.0 INTRODUCTION**

In accordance with Article 34 of the Code of Conduct for Gas Marketers operating under the Customer Choice program, on June 9, 2015 the British Columbia Utilities Commission (Commission) held the seventh Customer Choice Annual General Meeting (AGM) to discuss program improvements or enhancements.

The Commission has reviewed the issues raised and submissions made during the AGM proceeding and made determinations on the issues, where required, as outlined in this decision.

Section 2 addresses issues which are fundamental in nature and relate to the structure of the Customer Choice program. Issues discussed include the following:

- Whether a review the Essential Services Model (ESM) is warranted;
- Whether a review cost recovery fees and mechanisms is warranted; and
- The approach to modification of the Code of Conduct for Gas Marketers.

Section 3 is more specific in nature and deals with a number of proposals for change as proposed by the parties. Included among these are the following:

- FortisBC Energy Inc.'s (FEI) proposal to increase transaction fees to reflect the cost of postage;
- Direct Energy Marketing Ltd.'s proposal to enhance the Third Party Verification process;
- Access Gas Services Inc.'s proposal to eliminate the anniversary drop rule; and
- Commission staff's proposal regarding spousal authority under Article 26 of the Code of Conduct.

Section 4 deals with Commission staff's proposals for specific changes to the Code of Conduct.

Section 5 addresses remaining issues raised during the AGM.

## **2.0 MAJOR ISSUES**

### **2.1 Whether a review of the Essential Services Model is warranted**

The Essential Services Model (ESM) provides a framework which is the foundation for the Commodity Unbundling program that was implemented for commercial customers on November 1, 2004 and for residential customers on November 1, 2007. Under the ESM, a gas marketer delivers a quantity of the natural gas commodity to FEI based on the utility's normalized forecast of the gas marketer's customers annual load requirements. A cornerstone of the ESM is FEI's responsibility to provide billing services for all customers whether they choose a fixed rate product from a gas marketer or remain on the FEI regulated variable rate. This business requirement has been in place since the Commercial Unbundling program was introduced in 2004 and when the Customer Choice program was rolled out to residential customers in 2007.

Access Gas Services Inc. (Access Gas), Direct Energy Marketing Ltd. (Direct Energy) and Just Energy (BC) Limited Partnership (Just Energy) proposed a review of the ESM for discussion at the AGM. According to these gas marketers, it has been over a decade since the ESM was developed as the program framework and a fundamental review of the ESM is warranted.

In response to this proposal FEI states:

... any further investment or activity to replace the ESM is unnecessary and not in the best interests of customers. FEI believes that after already spending approximately \$11 million on the capital investment of the Customer Choice Program, ratepayers would have little appetite to fund a Program redesign to satisfy Gas Marketers' requests... FEI submits that the Essential Services Model is providing Gas Marketers and customers with more benefits than drawbacks such as being the Supplier of Last Resort, 100 percent load factor gas for Marketers and bill services provided by FEI.<sup>1</sup>

By Order A-3-15, the Commission determined that to review and consider modifying the framework of the program is a much larger issue than a program enhancement or improvement within the existing framework. As such, the AGM is not an appropriate method by which to deal with the issue. Accordingly, the Commission determined the discussion shall be limited to whether a review of ESM is warranted at this time; and if so, the development of a potential plan to address this issue.

Direct Energy is of the view that "the current ESM adversely affects marketers' abilities to offer a variety of products in an environment where marketing requirements are increasingly becoming more restrictive... As such, [Direct Energy] believes that a review of the ESM is required if the Customer Choice Program is to have a chance at growth through offering customers greater choice."<sup>2</sup>

At the AGM, Just Energy, on behalf of the gas marketers, made a presentation on the need to review the ESM. Just Energy noted "FEI has recently applied to smooth rates over a significantly extended period of time and is currently undertaking a Price Risk Review Workshop to strategize on reducing the impact of market volatility on customers."<sup>3</sup>

Just Energy requests that the Commission establish a working group to review the ESM and "determine changes needed to improve the competitive landscape, consumer and Gas Marketer satisfaction/participation as well as the viability and longevity of the Customer Choice program."<sup>4</sup> According to Just Energy:

There is a change in market dynamics in BC including decreasing disputes, low Gas Marketer participation, low enrollments and increased tightened restrictive marketing requirements; as evidenced by the 31 proposed changes to the Code. Data presented by Just Energy during the AGM reveal no clear correlation between consumer protection measures and decline in disputes. In fact, data reveal that price is a significant driver of disputes. The current ESM limits Gas Marketer product and service offerings as well as price. There is no ability to offer alternative products and an inability for consumers to cancel their agreement outside of their anniversary date.<sup>5</sup>

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<sup>1</sup> Exhibit B-3, Appendix A, pp. 6–7.

<sup>2</sup> Direct Energy Final Submission, p. 3.

<sup>3</sup> Transcript, Volume 2, Just Energy Presentation, p. 4.

<sup>4</sup> Just Energy Final Submission, p. 3.

<sup>5</sup> Ibid.

The British Columbia Old Age Pensioners Organization *et al.* (BCOAPO) does not support a fundamental review of the ESM at this time submitting that “it is only very recently that dispute numbers have begun to decline. We are still uncertain how the inclusion of [the new service territories following FEI amalgamation] will unfold. Importantly, developing a new model would be a large, costly undertaking with little benefit for ratepayers.”<sup>6</sup>

FEI opposes the gas marketers’ proposal that a review of the ESM is warranted and provides the following rationale:

- Customers have already invested more than \$11 million to implement the Customer Choice program, and will have no appetite to fund a program redesign simply to satisfy gas marketers’ requests.
- The program was designed to address BC’s unique natural gas transportation infrastructure. Given that neither British Columbia’s gas transportation infrastructure nor FEI’s annual commodity load profile has materially changed since the ESM was developed in 2004, there is no reason for a redesign save for the gas marketers’ dissatisfaction with the restrictions of the model.

FEI suggests that if the gas marketers wish to pursue a review of the ESM model, that avenue is open to them to submit a formal application for consideration by the Commission.

### **Commission determination**

Based on our review of the evidence, the Panel is not persuaded the proposed review of the ESM will offer the value to ratepayers necessary to justify the additional costs. Ratepayers have already invested more than \$11 million to implement the Customer Choice program and the Panel agrees with FEI that reviewing the ESM represents a new and unforeseen cost. Further, no compelling evidence that a review of the ESM is warranted has been presented. **Therefore, the Panel determines a review of the ESM is not warranted at this time.**

### **2.2 Whether a review of cost recovery, fees and mechanisms is warranted**

The Commission reviewed and approved the Customer Choice program cost recovery fees and mechanisms by Order C-6-06, when the program became available to residential customers in 2007. The Order provides the following direction: “Implementation and operating costs for the [Customer Choice program] are to be recovered using deferral account treatment as set out in the Application. The proposed deferral account mechanism, cost recovery rider and the proposed Group Fee, Customer Bill Fee and Confirmation Letter Fee set out in section 10.2 of the Application are approved.”<sup>7</sup>

Section 10.2.2 of Terasen Gas Inc.’s Application for Approval of a Certificate of Public Convenience and Necessity for the Customer Choice program states the following: “operating costs will be recovered from Gas Marketers where possible. Any unrecovered operating costs will be accumulated in a deferral account and are expected to be recovered from eligible residential customers through the use of a rate rider.”<sup>8</sup>

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<sup>6</sup> BCOAPO Final Submission, p. 4.

<sup>7</sup> Commission Order C-6-06, Directive 3, p. 2.

<sup>8</sup> Terasen Gas Inc., Application for Approval of a Certificate of Public Convenience and Necessity for the Residential Commodity Unbundling Project, p. 85.

BCOAPO raised the issue of the need to review the program cost recovery fees and mechanisms for discussion during the proceeding. Specifically, BCOAPO proposed the establishment of a variance account, or some other similar mechanism, to ensure program costs are fully recovered from gas marketers.<sup>9</sup>

According to FEI: “As Gas Marketer recoveries decline while Program Costs remain stable, FEI must ensure that Program costs are recuperated by program fees. While the expansion to Vancouver Island and Whistler will provide an extra infusion of program funds, FEI does not believe it will be enough to cover the shortfall in Program funding in future years.”<sup>10</sup>

Direct Energy considers the BCOAPO proposal to be premature, “[g]iven that FEI has already raised the issue of program cost recovery and intends to present the company’s recommendations regarding potential fee adjustments during the AGM process.”<sup>11</sup>

Just Energy makes a similar argument stating “the BCOAPO issue is premature given FortisBC’s issue [of billing and confirmation letter] Fees charged to Gas Marketers will discuss potential adjustments to the recovery mechanisms.”<sup>12</sup>

By Order A-3-15, the Panel directed the discussion on this issue to be limited to whether a detailed review of the cost recovery, fees and mechanisms is required at this point; and if so, on the development of a potential plan and timeline for doing so.

FEI states that if the transaction fee changes are approved, it will review the impact of the inclusion of Vancouver Island, Whistler, Powell River and the Sunshine Coast to assess the impacts of these changes and submit a separate application in Q1 2016 after conducting a comprehensive review of the program’s transaction fees.<sup>13</sup>

FEI requests the Commission clarify whether the total operating costs of the program excluding customer education costs should be borne by gas marketers.<sup>14</sup>

Direct Energy and Just Energy both believe that a detailed review of the cost recovery fee is not needed at this time.<sup>15</sup>

### **Commission determination**

**The Panel is persuaded by FEI’s assertion that the current shortfall in recovering operating costs from gas marketers will continue, and therefore determines a program cost recovery review is warranted. The Panel directs FEI to submit an application to the Commission regarding the Customer Choice program fee structure by March 31, 2016, after conducting a comprehensive review of the program’s transaction fees and gaining a**

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<sup>9</sup> Exhibit C5-2, pp. 1–2.

<sup>10</sup> Exhibit B-1, pp. 19–20.

<sup>11</sup> Exhibit C2-3, p. 1.

<sup>12</sup> Exhibit C3-3, p. 1.

<sup>13</sup> FEI Reply Submission, p. 12.

<sup>14</sup> Exhibit B-5, p. 14.

<sup>15</sup> Direct Energy, Final Submission, p.3 and Just Energy Final Submission, p. 3.

**better understanding of the impacts of Vancouver Island and Whistler on the program’s ability to recover costs.**

The allocation of the total operating costs of the program is best addressed during the program cost recovery review. **The Panel directs FEI to include in its program cost recovery application a proposal and rationale for the portion of operating costs to be recovered from gas marketers and the relevant mechanisms.** The Panel interprets the current framework for program cost recovery, as approved by Order C-6-06, to mean that the expectation of the Commission was that operating costs would be recovered from gas marketers. However, the Panel acknowledges the use of the words “where possible” is not clear and recommends this be addressed in FEI’s review of costs.

### **2.3 Code of Conduct for Gas Marketers review process**

The Code of Conduct for Gas Marketers (Code of Conduct) is reviewed and revised from time to time. The eighth revision of the Code of Conduct, established by Order A-10-12, is currently in effect. The issue raised is whether the AGM is an appropriate forum to review changes to the Code of Conduct and whether the parties have been given sufficient notice as to potential changes.

Article 34 of the Code of Conduct sets out the process for reviewing and updating the Code: “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.”<sup>16</sup>

In accordance with Article 34, Commission staff raised the issue of potential changes to the Code of Conduct for discussion at the AGM by letter dated March 27, 2015. No parties opposed discussing changes to the Code of Conduct during the AGM proceeding. Commission staff’s proposed changes were distributed to FEI and interveners on May 28, 2015.

Access Gas requests that the Commission fully consider the cost impact of the proposed changes. According to Access Gas:

...many of the Code of Conduct changes that have occurred since 2007 have added little or no incremental consumer protection value but have materially increased our sales costs and, in turn, our offered prices... The declining number of disputes/complaints we have witnessed in recent years is mainly due to the return of the normal rate volatility and not increased regulation... There are better ways to provide increased consumer protection at a lesser cost and Access supports the establishment of a working group to review and improve the Code of Conduct with these goals in mind.<sup>17</sup>

Direct Energy believes “it is unreasonable to introduce 31 changes to the code of conduct with little time to review, seek legal opinion, and assess operational and commercial impacts in the short window provided between the issuing of the proposed changes by Commission Staff on May 28<sup>th</sup>, and the AGM on June 9<sup>th</sup>.”<sup>18</sup> Direct Energy requests that the Commission defer its decision on changes to the Code of Conduct and convene a

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<sup>16</sup> Commission Order A-10-12, p. 26.

<sup>17</sup> Access Gas Final Submission, p. 1.

<sup>18</sup> Direct Energy Final Submission, p. 2.

working group to resolve the outstanding issues, to the extent possible, and make recommendations to the Commission regarding the Code of Conduct.

Just Energy “submits that the number of changes made is quite extensive and require further discussion on the impact of the same.”<sup>19</sup>

[FEI] submits that forming a working group to undertake future changes to the Code of Conduct may be more appropriate [than the current process]. This would give stakeholders more time to review the material and confer with counsel regarding proposed changes. FEI believes the information submitted to date should provide sufficient information to make a determination on the proposed changes to the Code of Conduct for Gas Marketers.<sup>20</sup>

Going forward, FEI proposes “it would be beneficial for Gas Marketers and Commission Staff to look at changes to the Code of Conduct for Gas Marketers outside of the AGM process. FEI suggests a digital review of content changes would be an appropriate method for addressing stakeholder comments and review. If the Commission determines it necessary, FEI is amenable to participating in a working group to help facilitate the Code of Conduct review process.”<sup>21</sup>

### **Commission determination**

**The Panel determines that a reliance on the AGM as a forum to discuss and make changes to the Code of Conduct is appropriate and that the process undertaken to review and modify it in this proceeding is procedurally fair.** The approach taken to review and modify the Code of Conduct as part of this AGM proceeding is consistent with the review process as outlined in Article 34 of the Code of Conduct. In addition, one of the key reasons there is an annual meeting is to discuss potential changes to the program or Code of Conduct and further, no parties opposed Commission staff’s proposal to review and modify the Code of Conduct as part of the AGM proceeding.

As to fairness, the parties were provided with the proposed changes 12 days prior to the meeting and the Panel notes that many of these changes were unopposed. Further, the Commission amended the Regulatory Timetable to provide additional time for interveners’ final submissions. This was done to allow sufficient time for interveners to review and comment on the independent legal opinion on the contentious issue of spousal authority. A total of three weeks was allowed for intervenor final submissions. Given these considerations, the Panel considers a review of the proposed changes to the Code of Conduct appropriate and addresses these in Sections 3 and 4.

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<sup>19</sup> Just Energy Final Submission, p. 1.

<sup>20</sup> FEI Reply Submission, pp. 7–8.

<sup>21</sup> *Ibid.*, p. 11.



### 3.0 OTHER ISSUES

#### 3.1 Review of transaction fees to gas marketers (customer bill and confirmation letter)

By letter dated March 27, 2015, FEI proposed to discuss adjustments to the customer bill fee and confirmation letter fee in order to cover the current cost of postage.

At the AGM, FEI proposed to “increase Gas Marketer recoveries by adjusting the customer billing fee and confirmation letter fee [as outlined in the table below] to cover the current cost of business postage retroactively to January 1, 2015.”<sup>22</sup>

Fees		2007	2015
Customer Bill	Postage	\$.38	\$.80
	Admin	\$.02	\$.02
	<i>Total</i>	\$.40	\$.82
Confirmation Letter	Postage	\$.38	\$.80
	Admin	\$.22	\$.22
	<i>Total</i>	\$.60	\$1.02

FEI states the “proposal to update the postage fee component of the billing and confirmation letter to cover the current cost of business postage is fair. FEI suggests to leave the administration fee as-is until a more extensive review of the Program’s fees is conducted. This proposal will allow FEI to avoid an estimated Program shortfall of approximately \$200,000 in 2015.”<sup>23</sup> Further, “FEI notes that the current fee structure approved by Commission Order C-6-06 dated August 14, 2006 was designed to cover the cost to produce and mail the letters and bills to customers.”<sup>24</sup>

FEI proposes to charge gas marketers a one-time fee to recover the difference between the previous fees and the revised fees, if approved, from January 1, 2015 up to the time to change in fees is implemented.

In response to Access Gas’ question on how many Customer Choice customers receive electronic bills rather than by mail, FEI reported that only 0.9 percent of Customer Choice contract accounts have opted for paperless billing services.<sup>25</sup>

Just Energy “is in agreement to the change to print and postage rates back dated to January 1, 2015 with respect of the confirmation letter; however, is not in support of the change to billing fees as it seems to go beyond the

<sup>22</sup> Exhibit B-5, p. 11.

<sup>23</sup> Exhibit B-5, p. 13.

<sup>24</sup> Ibid.

<sup>25</sup> Exhibit B-5, p. 14.

recovery of postage fees. Just Energy is of the understanding that Gas Marketers are not to pay for the total operating costs of the Customer Choice Program as the program is available to all rate payers.”<sup>26</sup> Just Energy requests that FEI defer the proposed change to the billing fee until the comprehensive review of the fee structure.

Direct Energy outlines its position as follows:

[Direct Energy] is in support of the proposed postage fee increases for the confirmation letter, but is opposed to the proposed increases for billing. Fortis sought in this application a recovery of postage fees, however the proposed billing fee goes beyond the recovery of print and postage costs. It is clear that the increase in billing fees proposed by Fortis would result in an over-recovery of costs from Marketers as the bill is a shared customer bill, with charges stemming from both the Marketer and Fortis. As such, [Direct Energy] cannot support the proposed increase in billing fees.<sup>27</sup>

BCOAPO supports FEI’s proposed customer bill and confirmation letter fee increases and states “gas marketers need to cover the expenses incurred to administer the Customer Choice Program. The shortfall should not be borne by residential ratepayers.”<sup>28</sup>

### Commission determination

**The Panel approves FEI’s request to increase the confirmation letter fee from \$0.60 to \$1.02, retroactively to January 1, 2015.** The parties agree the confirmation letter is clearly a gas marketer cost and no parties oppose the increase in the confirmation letter fee to reflect increases in postage rates since 2006. **The Panel approves FEI’s proposal to charge gas marketers a one-time fee to recover the difference between the previous confirmation letter fee and the revised confirmation letter fee, from January 1, 2015 up to the time to change in fees is implemented.**

**The Panel denies FEI’s request to increase the customer bill fee at this time.** There is disagreement among the parties as to whether the customer bill fee should be shared and the appropriate division between gas marketers and FEI. The Panel is not persuaded there is sufficient evidence on the record at this time to determine whether the customer bill fee should be divided between FEI and gas marketers, and if so, a fair and appropriate division of the costs. Therefore, **the Panel directs FEI to include an analysis and recommendation regarding the customer bill fee in its application on the Customer Choice program fee structure.**

### 3.2 Third Party Verification enhancement

Currently, Third Party Verification (TPV) is permissible only by telephone. Direct Energy proposes to enhance the TPV process by providing electronic TPV (online), as an alternative to telephone verification.

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<sup>26</sup> Just Energy Final Submission, p. 1.

<sup>27</sup> Direct Energy Final Submission, p. 1.

<sup>28</sup> BCOAPO Final Submission, p. 2.

By letter dated March 27, 2015, Direct Energy submitted the TPV enhancement topic for discussion at the AGM and explained:

... [Direct Energy proposes to] allow customers to 'self-verify' at a time of their choosing (i.e. at a time less than 24 hours if they choose) by providing customers at or closely following the point of sale, with electronic or telephonic means to verify their contract. DE intends to provide a presentation and documentation to the Commission and stakeholders at the AGM in support of this initiative.<sup>29</sup>

By Order A-3-15, the Commission denied the proposal to waive the 24 hour waiting period, and as such, determined only one element of Direct Energy's TPV enhancement issue shall be considered during the AGM: the proposal to allow customers to verify via electronic means.

FEI's 2014 Customer Choice Annual Report summarizes the proposal as follows:

The electronic TPV would give customers the option to complete the verification of their contract through an electronic means. An email with a verification link will be sent to potential customers so that they can verify themselves at their convenience. Access to the electronic TPV process will only be possible via the email link. This new TPV process would be based on the existing TPV process, timelines and scripting. All emails will adhere to the Canadian anti-spam legislation.

The email with the verification link will be sent 24-hours after the door-to-door contract sale. This link will remain available to customers until 20 calendar days following a contract signing, as per existing rules. Customers have to answer 'Yes' to all the questions within the verification form, in order for it to be considered a successful enrollment. If the verification is successful, then the Gas Marketer will send that enrollment to FEI for processing.

In the event that the customer does not respond to the electronic TPV within a certain timeframe, then an outbound TPV telephone call will be initiated. If a potential customer does not provide an email address then the TPV process would default to a telephone call.<sup>30</sup>

In its final submission, Direct Energy requests approval of its proposed TPV enhancement process and notes the gas marketers and FEI support the proposal.<sup>31</sup>

Just Energy supports Direct Energy's TPV enhancement proposal in its final submission.

BCOAPO supports Direct Energy's proposal "provided that the process is based on the existing TPV process, timelines and scripting."<sup>32</sup>

FEI "supports the use of alternative electronic means to allow customers to verify their marketer contract. FEI believes that this new process should reflect the same level of consumer protection that exists for the current TPV call. The electronic TPV verification process acknowledges widespread Consumer adoption of new

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<sup>29</sup> Exhibit C2-2, p. 2.

<sup>30</sup> Exhibit B-5, p. 38.

<sup>31</sup> Direct Energy Final Submission, p. 3.

<sup>32</sup> BCOAPO Final Submission, p. 3.

technology and their increasingly busy lifestyles. Providing Consumers with access to alternative electronic verification channels especially makes sense given the declining use of home phones.”<sup>33</sup>

### **Commission determination**

#### **The Panel approves the use of electronic TPVs, as proposed by Direct Energy on behalf of the gas marketers.**

The Panel agrees with FEI that the electronic TPV option acknowledges the widespread use of technology and the declining use of home phones. The Panel considers it to be beneficial to both customers and gas marketers to have the option to verify electronically or by telephone, provided the existing requirements for TPV, as set out under Article 33 of the Code of Conduct, apply.

The Panel determines the following wording shall be added to the relevant article of the Code of Conduct (currently Article 33):

- 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; or electronic process, wherein the Gas Marketer sends a website link by email to the Consumer to an electronic verification form. Regardless of the method of TPV (telephone or electronic) all requirements set out below apply.
- Additional Requirements for Electronic TPV:
  - Where permitted, the Gas Marketer shall send an email to the Consumer with a link to the electronic verification website. Access to the electronic TPV process is only possible via the email link.
  - The electronic verification form must follow the required TPV script.
  - The Gas Marketer must submit all electronic TPV materials to Commission staff for review and approval prior to commercial distribution and/or use. The Gas Marketer must retain, and submit to the Commission upon request, a record of the email sent to the Consumer regarding the TPV and a record of the Consumer’s electronic verification.

### **3.3 Anniversary drop rule**

Under the ESM, a customer must remain enrolled in the program at the same fixed price for intervals no less than 12 months. This is because the gas marketer delivers the same amount of gas each month, despite the customer’s varying consumption over the 12-month period. If a contract is cancelled within the 12-month period, the midstream cost reconciliation account (MCRA) is potentially impacted by either too much or too little gas having been delivered for that contract (i.e. the difference between the actual consumption and the levelized delivery amount).

The issue of cross-subsidization between Customer Choice participants and all FEI ratepayers was reviewed extensively during the initial program design, and the anniversary drop rule was developed to eliminate it. Under the anniversary drop rule, customers may only cancel contracts once per year, on the anniversary of the

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<sup>33</sup> Exhibit B-5, p. 39.

contract start date (anniversary date). As this “anniversary drop” rule was accepted when the program was designed, the functionality to track the impact to the MCRA of contracts being cancelled outside the anniversary date was not built into FEI’s information technology system for Customer Choice.

Access Gas proposed a discussion on the anniversary drop rule at the AGM. Based on its view, all FEI customers have access to the Customer Choice program and over time each FEI customer will positively and/or negatively impact the MCRA due to: daily, weekly and annual consumption patterns; opening and closing of accounts; enrolling in Customer Choice; and so on. Access Gas argues that since all FEI customers impact the MCRA over time, Customer Choice customers should not be held to a different standard by not being able to cancel their contract until the anniversary date. Access Gas takes the position that “a customer-initiated drop is not in contravention of the spirit of the ESM, and it’s an important distinction... Customers do not have an incentive with respect to timing the MSR [marketer supply requirement] impacts [unlike gas marketers].”<sup>34</sup>

At the AGM, Access Gas presented an ESM cash flow example indicating “the impact of customer initiated drops to the MCRA account will be positive and negative, with an overall expected value of zero, if cancellations are evenly distributed throughout the year.”<sup>35</sup>

Direct Energy supports Access Gas’ view that “*customer initiated* cancellations are not in contravention of the spirit of the [ESM], and should be allowed for Customer Choice customers” and argues that allowing Customer Choice “customers the opportunity to cancel their contracts will put them on an even playing field with default customers, and enhance the customer experience.”<sup>36</sup>

Just Energy submits the Access Gas proposal to allow customer initiated cancellations outside of the anniversary date is a benefit to Customer Choice participants and requests the Commission approve the proposal.<sup>37</sup>

BCOAPO submits “the purpose of the Customer Choice Program was to offer customers a choice between the variable rate option and the fixed rate option. Without the anniversary drop rule, customers would now be able to leave the fixed rate option when they choose, making it so Gas Marketers were not truly offering a fixed rate.”<sup>38</sup> BCOAPO views the proposal as a deviation from the original intent of the program and does not support it.<sup>39</sup>

FEI outlines its position in the 2014 Customer Choice Annual Report, as summarized below:<sup>40</sup>

- Access Gas’ proposal to allow cancellations outside of the anniversary date fundamentally contravenes the ESM and the original intent of the Customer Choice program.
- Access Gas’ ESM cash flows example is a simplistic view of the big picture based on assumptions that represent a sliver of contracted volume. A real-world situation involving actual system-wide volumes would present a material impact on the MCRA that could not be predicted.
- There is no material benefit to customers in re-evaluating the rules that underpin the program, including

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<sup>34</sup> Transcript, Volume 1, p. 203.

<sup>35</sup> Transcript, Volume 1, p. 208.

<sup>36</sup> Direct Energy Final Submission, p. 3.

<sup>37</sup> Just Energy Final Submission, p. 3.

<sup>38</sup> BCOAPO Final Submission, p. 4.

<sup>39</sup> Ibid.

<sup>40</sup> Exhibit B-5, p. 41.

the anniversary drop rule.

- FEI does not have the resources to re-evaluate the program rules.
- Customers who choose not to participate in Customer Choice should not be affected (positively or negatively) by unfulfilled Customer Choice commodity contracts.
- Early exit mechanisms already exist for those customers in need, such as cancellation disputes and the operational correction drop code.
- A method to contravene the anniversary drop rule, the ESM fee option, was first proposed in 2006. All stakeholders agreed not to proceed with implementation of the ESM fee option and participants acknowledged that a cost recovery mechanism would be necessary if consumers were to be given more flexibility to leave their commodity contracts outside of the anniversary date.

### **Commission determination**

**The Panel rejects the proposed changes to the anniversary drop rule.** The anniversary drop rule was put in place to balance the amount of gas consumed by the gas marketer customer with the gas provided on the customer's behalf by the gas marketer. Allowing the cancellation part way through the contract period creates the potential for an imbalance directly impacting the MCRA and therefore, all of FEI's gas customers. The Panel acknowledges that there are already exceptions to this based on determinations related to the dispute process. However, we are not persuaded there is sufficient reason to justify charging additional risk to the MCRA, thereby increasing the risk to FEI's gas customers.

### **3.4 Article 26 – Spousal authority**

Currently, the following parties are listed as being authorized to enter into residential agreements under Article 26 of the Code of Conduct: the account holder; the account holder's spouse; or a legally authorized representative of the account holder. Commission staff proposed to remove the word "spouse" from Article 26, so the account holder's spouse would no longer be considered an automatic signing authority under the Code of Conduct.

During the AGM Commission staff noted that even if the word "spouse" was removed from Article 26 of the Code of Conduct, there would be many instances where a spouse could sign on behalf of the account holder, if legally authorized to do so.<sup>41</sup> For example, if an account holder lists his/her spouse as an authorized party on the account, then the spouse would be authorized to sign a gas marketer agreement.

Staff also provided the following data on the percentage of standard disputes filed on the basis of an unauthorized spouse having signed the agreement: in 2014, 8 percent of disputes; in 2013, 2 percent of disputes; and in 2012, 5 percent of disputes.<sup>42</sup>

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<sup>41</sup> Transcript, Volume 1, p. 93.

<sup>42</sup> Ibid.

Commission staff referred AGM participants to Chapter 7 of Fridman's *Law of Agency*, which discusses agency by operation of law, and provided the following summary of the excerpt:

...at a very high level, according to the common law on [spousal authority], in order for the spouse to have this type of authority, it must be shown that the goods purchased or contracted were necessities, of which the spouse did not already have sufficient quantity. Another thing to note ... is a footnote on page 145 that questions the application of the principle of spousal authority in today's environment.<sup>43</sup>

Access Gas is "adamantly opposed" to the proposal and states:

the major issue I have with [removing the word spouse from Article 26] is that it effectively removes half the market from the gas marketers. So if I'm out marketing a gas contract, I need to bang on twice the number of doors... So to me, this is just another cost to marketing that is going to dramatically increase the prices I have to charge consumers. And I don't think there's any benefit, especially considering that of, you know, tens of thousands of contracts we've only had a handful of disputes related to this issue. And I can tell you that a lot of, you know, the relation of contracts we signed with the spouse versus the disputes we received from them are materially different.<sup>44</sup>

Just Energy states: "no impetus for this change has been provided and strongly question[s] the necessity of the same given record low complaint to sales ratio relating to spousal signatures. Just Energy adamantly opposes this request and believes that further discussion should ensue prior to any changes being made with respect to this issue."<sup>45</sup>

Bluestream Energy Inc. (Bluestream Energy) had no comment on this issue as they do not market to the residential sector.

Direct Energy states the proposal is:

...in the category of much ado about nothing. If we take a look at the customer dispute statistics where we're looking at seven [disputes in 2014] that were made with respect to this issue out of 11,000 sales, we end up with something like .004 percent of sales that this might affect... For the reasons that [Access Gas] stated before, we would adamantly oppose not having the spouse be able to sign up. We think that this particular item is an example of how overly regulating will cause additional costs or potentially declining customers...<sup>46</sup>

Direct Energy further states: "when you compare [spouse being able to sign] to someone calling up Fortis to access information on someone's account, you don't know who they are when they're phoning in. That's a privacy issue. If there is a customer that wants to sign up with us, and they're a spouse, it's a matter of choice."<sup>47</sup>

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<sup>43</sup> Transcript, Volume 1, pp. 94–95.

<sup>44</sup> Transcript, Volume 1, p. 97.

<sup>45</sup> Just Energy Final Submission, p. 2.

<sup>46</sup> Transcript Volume 1, p. 98.

<sup>47</sup> Transcript, Volume 1, p. 99.

FEI provides information related to their practices: “we only will provide information about a gas account to the account holder. And we will only allow changes to the gas account from the account holder, primarily for privacy reasons as has been mentioned.”<sup>48</sup>

At the AGM, gas marketers requested information regarding:

1. The outcome of disputes filed in 2014 on the basis of invalid contract due to spouse signing; and
2. Whether spouse has been listed as an authorized signatory under the Code of Conduct for Gas Marketers since 2007, and if not, information on when and how spouse was added to the Code of Conduct for Gas Marketers.

A summary of Commission staff’s response to the gas marketers’ information request is provided below:<sup>49</sup>

## **1. DISPUTE OUTCOMES**

In 2014, seven disputes were filed on the basis of an invalid contract due to spouse signing. Of those, six disputes were filed by residential customers and one dispute was filed by a commercial customer.

Of the six disputes filed by residential customers, one dispute was resolved directly between the gas marketer and the customer by agreeing to cancel the contract without exit fees effective the next contract anniversary date. The Commission adjudicated the remaining five disputes and determined:

- One contract was valid and binding on the basis that the signatory was the account holder, not the account holder’s spouse;
- Three contracts were ruled as valid and binding because:
  - Article 26 of the Code of Conduct for Gas Marketers in effect at the time of signing, established the signatory may be the Account Holder, the spouse or a legally authorized representative. The signatory (account holder’s spouse) confirmed he/she was authorized to enter into the agreement on behalf of the account holder by signing the contract and during the Third Party Verification call; and
- One contract was ruled invalid and cancelled since inception on the basis that the Third Party Verification call was not compliant with the Code of Conduct for Gas Marketers.

## **2. CODE OF CONDUCT FOR GAS MARKETERS**

Spouse was not listed as an authorized signatory for residential contracts prior to 2011. Spouse was expressly added to the Code of Conduct for Gas Marketers established by Order A-9-11, issued following the Terasen Gas Inc. (now FEI) 2010 Customer Choice program Summary and Recommendations proceeding. A summary of the relevant submissions is provided below.

When the topic arose during the 2010 Customer Choice Annual General Meeting, Planet Energy referenced a law in Ontario that says a spouse can bind the other spouse for certain necessities of life and put forth that the Ontario Energy Board may rely on that law to say the spouse can bind the

<sup>48</sup> Transcript, Volume 1, pp. 99–100.

<sup>49</sup> Exhibit A-7, pp. 1–3.



account holder for the purposes of a gas marketing contract.

Just Energy stated for residential customers the account holder and their spouse or authorized representative, Power of Attorney, should be acceptable signatories to a contract.

BCOAPO argued that Ontario law has no application in BC, and an account holder can only be bound by the commitment of another on their behalf if they have been authorized to act as an agent. The integrity of the program rests upon valid contracts made by parties with legal authority to enter into them.

In its final submission, Terasen Gas disagreed with Commission staff's suggestion to limit authorized signatories to account holders on the basis that the current consumer protection rules are sufficient to protect customers. In addition, in its application, Terasen Gas noted that the Customer Choice system was not designed to validate the enrolment based on the account holder name and any system change would be costly. Moreover, Terasen Gas should not be placed in a position to police third party agreements. Further, some residential customers are registered only by their first initial/last name and 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.

In its Reasons for Decision to Commission Order A-9-11, 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 Code of Conduct for Gas Marketers attached as Appendix C to Order A-9-11 was updated to reflect the decision regarding residential signing authority, among others. Article 26 of the Code of Conduct for Gas Marketers established by Order A-9-11 states, in part: For Residential Consumers, the signatory may be the account holder, the spouse or a legally authorized representative.

No submissions were made in final submission concerning Commission staff's response to information requests.

As outlined by Commission staff at the AGM, the Commission obtained an independent legal opinion from Bennett Jones LLP on the following question: "Is the spouse of a FortisBC account holder authorized at law to enter into a gas marketing agreement for a residential premise on behalf of the FortisBC account holder, as a sole result of being the spouse (i.e., there is no other legal basis for the authorization, e.g., being listed on the FortisBC account as an authorized party, power of attorney, etc.)?"<sup>50</sup>

The independent legal opinion, dated June 30, 2015, provides the following brief answer to the question, in addition to further analysis and detail:

The spouse of an Accountholder is not authorized at law to enter into a gas marketing agreement for a residential premise on behalf of the Accountholder, solely as a result of being the Spouse.

The spousal relationship – by marriage or cohabitation – does not by itself create an agency relationship. Each spouse has a separate and independent legal personality. Absent an express grant of authority from the Accountholder to the Spouse, an agency relationship would only

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<sup>50</sup> Exhibit A-8, p. 1.

arise in exceptional circumstances. The circumstances surrounding a gas marketing agreement would not likely give rise to those exceptional circumstances.

Further, a gas marketer would have the onus to prove that such exceptional circumstances existed. The evidence to support the assertion that the Spouse had the authority to transact on behalf of the Accountholder would have to be clear and unequivocal. That onus would be difficult to meet in the case where the Accountholder challenged the authority of the Spouse to transact for the Accountholder.<sup>51</sup>

In its final submission, BCOAPO states: “The legal opinion is thorough... [I]n order to ensure the contracts entered into by Gas Marketers are legally valid, the Code of Conduct must be amended.”<sup>52</sup>

None of the gas marketers made submissions on the legal opinion.

In its Reply, FEI stated that it “accepts the legal opinion obtained by the Commission and agrees with BCOAPO that the Code of Conduct should be amended... This will ensure that all Customer Choice contracts signed are legally valid.”<sup>53</sup>

### **Commission determination**

**The Panel amends the portion of Article 26 of the Code of Conduct regarding residential signing authority to be changed, effective immediately, to the following: “For Residential Consumers, the signatory may be the Account Holder or a legally authorized representative.”** The Panel agrees with the legal opinion of Bennett Jones LLP and considers it to properly summarize the law. As such, the Panel determines that removing the word “spouse” from Article 26 is necessary and appropriate.

The Panel acknowledges that this change will present a challenge to gas marketers. However, we do not accept that the low number of cited problems is justification for not making the change. The Panel finds that an unauthorized spouse of a named account holder is not covered by the “law of agency” and is not authorized at law to enter into a contract on behalf of the account holder solely on the basis of being a spouse.

The Panel is duly aware that in making this change effective immediately, we are departing from the more traditional practice of allowing a transition period for adoption of changes to the Code of Conduct. However, having determined that inclusion of the spouse as currently set out in the Code of Conduct is in direct contravention of law, immediate rectification of the problem is warranted in this particular instance.

## **4.0 REVISIONS TO THE CODE OF CONDUCT FOR GAS MARKETERS**

As discussed in Section 2.3, Commission staff proposed changes to the Code of Conduct for Gas Marketers for discussion during the proceeding. **The Panel has reviewed the submissions and determined changes to the Code of Conduct are warranted. The revised Code of Conduct is attached to this decision as Appendix A. The Ninth Revision of the Code of Conduct for Gas Marketers, as attached, is effective November 10, 2015.**

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<sup>51</sup> Exhibit A2-1, p. 1.

<sup>52</sup> BCOAPO Final Submission, p. 3.

<sup>53</sup> FEI Reply Submission, p. 9.

This section addresses all changes to the Code of Conduct except the proposal to remove the word “spouse” from Article 26, which is addressed in Section 3.4 above.

#### Unopposed changes

During the AGM, a number of changes were unopposed by participants as initially proposed by Commission staff. In other cases, participants were able to come to agreement on a proposed change, with revisions, during or following the AGM. **The Panel reviewed these proposed changes to the Code of Conduct and determines approval is warranted.** Appendix B outlines the approved revised wording and provides a summary of the submissions regarding each change for historical purposes.

#### Other changes

The parties were unable to agree upon the following changes to the Code of Conduct. The Panel has reviewed the submissions and made determinations regarding the final wording.

#### **4.1 Article 7, Identity of the gas marketer**

Commission staff proposed to add a new requirement regarding business cards and identification badges to Article 7, as outlined below:

A Gas Marketer shall ensure that every Salesperson that is acting on its behalf and that is marketing to a Consumer in person:

- provides the Consumer with a business card that meets the requirements below, before making any representation to the Consumer about the Gas Marketer’s products, services or business and before requesting any information about the Consumer, including asking that the Consumer locate any utility bills; and
- wears at all times, on the front of the Salesperson’s outer clothing, an identification badge that meets the requirements below.

#### **Business Card Requirements:**

The business card shall be clear, legible, of standard size (approximately 3.5" by 2") and include the following information:

- a. the licence number issued to the Gas Marketer under the Act;
- b. the name and address of the Gas Marketer;
- c. the name and identification number of the Salesperson acting on behalf of the Gas Marketer;
- d. the toll-free telephone number of the Gas Marketer; and
- e. the website address of the Gas Marketer.

#### **Identification Badge Requirements:**

The identification badge shall be clear and legible and:

- a. include a photograph of the Salesperson’s face that is not more than 2 years old at any time;

- b. identify the Gas Marketer; and
- c. identify the name and identification number of the Salesperson acting on behalf of the Gas Marketer.

The Salesperson's photograph and all of the required information set out above must be shown on the same side of the identification badge, and must at all times be facing the Consumer.

At the AGM, Commission staff explained that the salesperson remained unidentified in 35 percent of the complaints filed with the Commission regarding gas marketer sales activity in 2014.<sup>54</sup> In these cases, the gas marketer and the Commission are unable to tie the complaint to a specific salesperson, an important step in tracking possible areas of concern with respect to salesperson conduct. Staff also noted these requirements would assist customers in understanding the salesperson does not represent the utility, government or Commission.<sup>55</sup>

Regarding the proposed requirement for a business card, Access Gas and Just Energy noted they already provide "contact sheets" or "leave behind" materials for customers which include the company name, agent name and/or identification number and a contact telephone number should the customer have any questions or concerns.<sup>56</sup>

The parties agreed that Commission staff's proposed wording was overly prescriptive and that the objectives could be achieved at lower cost to the gas marketers. The gas marketers agreed to develop and propose alternate wording following the AGM. FEI includes the gas marketers' suggested revisions to Commission staff's proposed wording in the 2014 Customer Choice Annual Report.

All parties supported the proposed addition regarding the identification badge requirement.<sup>57</sup>

The final proposed wording, including the revisions from the gas marketers, is outlined below:

A Gas Marketer shall ensure that every Salesperson that is acting on its behalf and that is marketing to a Consumer in person:

- provides the Consumer with ~~a business card~~ *identity collateral* that meets the requirements below, before making any representation to the Consumer about the Gas Marketer's products, services or business and before requesting any information about the Consumer, including asking that the Consumer locate any utility bills; and
- wears at all times, on the front of the Salesperson's outer clothing, an identification badge that meets the requirements below.

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<sup>54</sup> Transcript Volume 1, p. 73.

<sup>55</sup> Ibid.

<sup>56</sup> Transcript Volume 1, pp. 74–79.

<sup>57</sup> Transcript Volume 1, p. 83.

**Business Card Identity Collateral Requirements:**

The ~~business card~~ identity collateral shall be clear, legible, ~~of standard size (approximately 3.5" by 2")~~ and include the following information:

- ~~(a) the licence number issued to the Gas Marketer under the Act;~~
- (b) the name and address of the Gas Marketer;
- (c) the name and/or identification number of the Salesperson acting on behalf of the Gas Marketer;
- (d) the toll-free telephone number of the Gas Marketer; and
- (e) the website address of the Gas Marketer.

**Identification Badge Requirements:**

The identification badge shall be clear and legible and:

- (a) include a photograph of the Salesperson's face that is not more than 2 years old at any time;
- (b) identify the Gas Marketer; and
- (c) identify the name and identification number of the Salesperson acting on behalf of the Gas Marketer.

The Salesperson's photograph and all of the required information set out above must be shown on the same side of the identification badge, and must at all times be facing the Consumer.

There was discussion during the AGM regarding whether salespersons should be able to enter their own name and/or identification number on the identity collateral or whether this information should be pre-populated to ensure it is included.<sup>58</sup> Access Gas and Just Energy currently allow salespersons to enter the information themselves, and note that pre-populating this information would represent significant additional cost at little value, given that they state they have no issues with salesperson adherence to entering the information. BCOAPO noted some concern with salespersons being allowed to enter the information themselves.<sup>59</sup>

FEI agrees with the "intent of the change, but suggest the specific requirement should recognize the need to keep costs low for Gas Marketers and thereby Consumers."<sup>60</sup>

BCOAPO is "supportive of ensuring that the sales associates are easily identifiable to consumers even when they do not sign a contract with a gas marketer. Given that there continues to be disputes relating to the misrepresentation of the identity of the gas marketers, this is a critical amendment to the Code of Conduct."<sup>61</sup> BCOAPO supports the requirement for a business card and identification badge and proposes a further requirement to provide consumers with information relating to the Commission's role in taking complaints about gas marketers' conduct where no contract has been signed.

FEI notes that adequate information about the complaints process is available to consumers at the door when gas marketers leave the Standard Information Booklet, and additionally, it is available on the FortisBC website.<sup>62</sup>

<sup>58</sup> Transcript Volume 1, pp. 77–82.

<sup>59</sup> Transcript Volume 1, pp. 79–80.

<sup>60</sup> Exhibit B-5, p. 19.

<sup>61</sup> BCOAPO Final Submission, pp. 2–3.

<sup>62</sup> FEI Reply Submission, pp. 3–6.

FEI believes that leaving the Standard Information Booklet with consumers at the door may satisfy BCOAPO's request to provide consumers with information relating to the Commission's role in taking complaints.<sup>63</sup>

According to Article 16 of the current Code of Conduct for Gas Marketers: "A Salesperson shall ensure that the Consumer has been provided with a copy of the Standard Information Booklet and... provide a copy of the Customer Choice Standard Information Booklet to a potential Consumer, when requested, even if the Consumer decides not to enter into a Consumer Agreement with the Salesperson at that time."<sup>64</sup>

### Commission determination

**The Panel approves the addition of a requirement for identity collateral and identification badge to Article 7, as proposed by Commission staff and revised by the gas marketers, as outlined above.** The Panel considers it to be overly prescriptive to require gas marketers to pre-populate the salesperson's name and/or identification on the identity collateral. Gas marketers may implement the requirement for the inclusion of the salesperson name and/or identification number on the identity collateral.

**The Panel denies BCOAPO's proposal to require gas marketers to provide consumers with information relating to the Commission's role in taking complaints about gas marketers' conduct where no contract has been signed.** The Panel considers there to be adequate information on the Commission's complaint process readily available to consumers. In addition, gas marketers are already required to provide prospective customers with the Standard Information Booklet, which includes information on the Commission's complaints process, upon request. For these reasons, the Panel is not convinced the proposed requirement is warranted at this time.

### 4.2 Article 26, Legally authorized representative

Commission staff proposed the following changes to Article 26 of the Code of Conduct regarding residential signing authority, outlined below:

For Residential Consumers, the signatory may be the Account Holder, ~~the spouse,~~ or a person authorized at law to enter into the agreement on behalf of the Account Holder (e.g. power of attorney) ~~legally authorized representative.~~

This section will deal with the second proposed change in the sentence above, to replace the words "a legally authorized representative" with "a person authorized at law to enter into the agreement on behalf of the Account Holder (e.g. power of attorney)."

Commission staff explained the need for the proposed change as follows:

Rather than just someone saying they are legally authorized, the shift would be to, is the signatory authorized at law to sign the agreement on behalf of the account holder. So, the idea here is, there would be a legal foundation for, and evidence of, their authorization. So, I

<sup>63</sup> FEI Reply Submission, p. 7.

<sup>64</sup> Commission Order A-10-12, Appendix A, p. 13.

mentioned power of attorney, executor, [and] being listed as an authorized person on the FortisBC account.<sup>65</sup>

During the AGM, FEI and BCOAPO agreed the distinction between the current wording and the proposed new wording would be difficult to communicate to customers. FEI states “the change seems unwarranted given the negligible disputes associated with the proposal and... as noted by Just Energy, the TPV call specifically addresses this particular concern [by having the signatory confirm he or she is authorized to enter into the agreement].”<sup>66</sup>

The gas marketers’ position is to leave the wording as “legally authorized representative.”<sup>67</sup>

### **Commission determination**

**The Panel determines the “legally authorized representative” wording shall be retained.** The Panel is persuaded by FEI and BCOAPO’s concerns and the gas marketers’ opposition, and therefore concludes the proposed change does not represent a significant improvement to the current wording.

### **4.3 Article 26, Term**

Currently, under Article 26, the first page of the agreement must list the: “term (length in years, start and end dates).” Staff proposed adding a requirement here to list the start and end dates in month, day, year format as opposed to in words, for example “the start date is the first date gas flows.”

The gas marketers oppose the proposal on the basis that they have no way to know the exact start and end date based on limitations of the enrollment process.<sup>68</sup> During the AGM, Access Gas explained they define the start and end date in words, given the impracticality of specifying exact dates, and noted the confirmation letter sent to the account holder following enrollment lists the exact start and end date.<sup>69</sup>

BCOAPO had no comment on the matter during the AGM or following.

Just Energy “advises that the existing enrollment process does not allow Gas Marketers to include a contract start and end date in [the proposed format]... Just Energy includes the following on the front of its contract and is of the view that it should remain; The Term of this Agreement will begin on the Start Date, which will be in approximately, 30-60 days from signing and it will expire on the End Date, which is 4 or 5 years thereafter...”<sup>70</sup>

In its final submission, FEI agrees with the gas marketers that the proposal is impractical given current business processes.

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<sup>65</sup> Transcript, Volume 1, p. 109.

<sup>66</sup> Exhibit B-5, p. 26.

<sup>67</sup> Exhibit B-5, p. 27.

<sup>68</sup> Exhibit B-5, p. 27.

<sup>69</sup> Transcript, p. 117.

<sup>70</sup> Just Energy Final Submission, p. 2.

## Commission determination

The Panel accepts the gas marketers' point that the proposal is inconsistent with current business practices and not appropriate for implementation. **The Panel determines the section of Article 26 regarding the requirement for listing the start and end dates will remain unchanged.**

### 4.4 Article 27, New agreements

Commission staff proposed adding a new article to the Code of Conduct to ensure clarity regarding the requirements for new agreements, as outlined below:

In the case where a Consumer enters into an agreement with a Gas Marketer for the first time, the Gas Marketer shall obtain the Consumer's written signature or electronic signature on the Consumer Agreement. In the case of electronic signature, the Gas Marketer shall ensure all applicable requirements under the *British Columbia Electronic Transactions Act* are met.

Voice contracting is not allowed for new agreements.

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 (written or electronic) Consumer Agreement from the Consumer.

Staff noted none of the requirements set out in the proposed article are new, in as much as they exist elsewhere in the Code of Conduct, and the intent of the proposed new article is to consolidate and clarify existing requirements.

While recognizing that the restriction on voice contracting for new agreements is not new, gas marketers oppose the inclusion of wording outlining the restriction. Direct Energy states that since gas marketers intend to apply to the Commission for approval of voice contracting for new agreements this added wording would be premature at this time, however if gas marketers do not bring forward an application prior to the next AGM the proposed addition could then be reconsidered.<sup>71</sup> In its final submission, Just Energy supports Direct Energy's view on this issue.

BCOAPO is of the view that "the Code should reflect what is currently allowed or not allowed. So if voice contracting is not allowed, then that should be reflected in the Code. And if that changes, then the Code is just amended."<sup>72</sup>

FEI supports BCOAPO's position on the matter in its 2014 Customer Choice Annual Report.

## Commission determination

**The Panel agrees with BCOAPO and FEI that the Code of Conduct should reflect the current program rules and approves the proposed revised wording as outlined above.**

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<sup>71</sup> Transcript, Volume 1, p. 125.

<sup>72</sup> Transcript, Volume 1, pp. 125–126.



As noted in Order A-3-15, gas marketers were advised to submit a formal application to the Commission in order to seek approval of voice contracting for new agreements following the 2010 Customer Choice AGM. The Commission will determine whether changes to the Code of Conduct are required following its review of and decision regarding such an application.

#### 4.5 Article 33, Verifiable date and time stamp

Commission staff proposed adding wording to Article 33 to require that the recording of the TPV call have associated with it a verifiable date and time stamp to support compliance and enforcement with the existing requirement that the call cannot occur until 24 hours or more after the consumer signs the agreement.

Access Gas suggested that the proposed requirement will drive new system costs and force up consumer prices. Gas marketers note that question two of the required TPV script already asks the Consumer to confirm that they signed their agreement more than 24 hours ago. Given the near or at zero disputes associated with this proposal, the gas marketers suggest the change is not warranted at this time.<sup>73</sup>

FEI supports the change if gas marketer information systems can easily accommodate the request but believes that there is no pressing performance issue that calls for the change at this time.<sup>74</sup>

BCOAPO did not comment on the proposal.

#### Commission determination

**The Panel determines the proposed change is not warranted.** Given that the signatory must confirm he/she signed the agreement more than 24 hours ago during the TPV and that FEI sees no pressing issue, the Panel agrees that imposing the added costs for gas marketers is not cost-benefit justified.

#### 4.6 Articles 27 and 33, Requirement for TPV

Commission staff proposed the following revisions to the wording in Articles 27 and 33 regarding the requirement for TPV:

The TPV call is not required if the Consumer executes the Agreement with no contact by a Salesperson, through any means (e.g. in-person, telephone, online, etc.), in the Marketing or contracting process ~~was entered into via Internet Marketing or if the Consumer responded to a Gas Marketer's direct mail or telemarketing campaign.~~

While the issue was discussed separately regarding new agreements and renewal agreements during the AGM, the comments are applicable to both, and as such, the summary provided below and determination made in this section applies to the requirement for TPV in both Article 27 (Renewal of Agreements) and Article 33 (Third Party Verification).

<sup>73</sup> Exhibit B-5, p. 33.

<sup>74</sup> Exhibit B-5, p. 33.

At the AGM, staff provided the following rationale for the proposed change. The current wording in the Code of Conduct was intended to waive the TPV call for agreements where there was no potential for salesperson influence. Internet marketing is listed in the current wording regarding waiving TPV, and the internet marketing definition makes it clear that there is no presence or involvement of a salesperson. The TPV call is also waived if the consumer responded to a gas marketer's direct mail campaign, and it is reasonable to assume there is no potential for salesperson influence in these situations as well. On the other hand, the current Code of Conduct says that the TPV is not required if the consumer responded to a gas marketer's telemarketing campaign, notwithstanding that this situation has the potential for influence by a salesperson.<sup>75</sup>

According to the FEI 2014 Customer Choice Annual Report,

Marketers reject the proposed wording as it is too broad. Further, the wording does not allow for instances of customers who do not enter into a contract at the time of receiving information about offers from a salesperson, but then decide to sign up with a Marketer at a later date on their own volition. Marketers feel this issue could be addressed by replacing [staff's proposed wording 'in the Marketing or contracting process' with 'at the time of contracting'].<sup>76</sup>

FEI is of the view that changes to the current wording regarding requirement for TPV are not warranted. FEI "suggests should changes proceed there may be value in clarifying when TPV calls are needed, and contrasting those situations to when TPVs are not needed."<sup>77</sup>

Just Energy states "the proposed language; *in the Marketing or contracting process* is ambiguous and will lead to confusion."<sup>78</sup> While Just Energy advocates dealing with this issue via a working group, in the meantime, Just Energy supports the suggested replacement wording "*at the time of contracting*."<sup>79</sup>

While BCOAPO agrees with gas marketers that staff's proposed wording is too broad, BCOAPO views the gas marketers' proposed wording as too narrow. BCOAPO suggests the following wording: "The TPV call is not required if the Consumer executes the Agreement with no contact in the last 60 days by the Salesperson through any means (e.g. in person, telephone, online, etc.) in the marketing or contracting process."<sup>80</sup>

### **Commission determination**

**The Panel approves the following wording regarding the requirement for TPV, as proposed by Commission staff and later amended by the gas marketers:**

The TPV is not required if the Consumer executes the Agreement with no contact by a Salesperson, through any means (e.g. in-person, telephone, online), at the time of contracting.

<sup>75</sup> Transcript, Volume 1, pp. 140–142.

<sup>76</sup> Exhibit B-5, p. 35.

<sup>77</sup> Exhibit B-5, p. 35.

<sup>78</sup> Just Energy Final Submission, p. 2.

<sup>79</sup> Just Energy Final Submission, p. 3.

<sup>80</sup> BCOAPO Final Submission, p. 2.

**The Panel determines Articles 27 and 33 shall be updated to reflect this change.**

The Panel accepts the gas marketers' position that referring to the marketing process is too broad. However, we consider BCOAPO's proposal to be onerous and impractical for gas marketers to implement and for the Commission to monitor and enforce.

#### **4.7 Article 33, Automated TPV calls**

Commission staff brought forward the following proposed change to add requirements for automated TPV calls to the Code of Conduct, as agreed by participants during the sixth Customer Choice AGM:

##### **Automated TPV Calls**

*The following additional requirements are in place for the use of automated TPV calls (i.e. where a live-person is not conducting the TPV call):*

- *the call must use voice verification (as opposed to using button tones to confirm understanding, e.g. press 1 for "yes" or 2 for "no");*
- *the call must include a verifiable record of the incoming or outgoing telephone number dialed to/from the Consumer to complete the call; and*

the Gas Marketer must review a minimum of X% of the calls for quality assurance.

Staff requested input on the percentage of automated TPV calls to be reviewed for quality assurance. Access Gas noted they review 100 percent of their automated TPV calls for quality assurance. In addition, Access Gas noted that approximately 10 percent of their automated TPV calls do not contain a verifiable record of the telephone number due to the customer blocking the caller ID function.<sup>81</sup>

At the AGM, BCOAPO supported the proposed requirement to review a minimum percentage of calls for quality assurance but did not have a strong view on the minimum percentage to require.<sup>82</sup>

No other comments were made on this issue.

#### **Commission determination**

**The Panel determines approval of the following wording is warranted:**

##### **Automated TPV Calls**

*The following additional requirements are in place for the use of automated TPV calls (i.e. where a live-person is not conducting the TPV call):*

<sup>81</sup> Transcript, Volume 1, pp. 175–176.

<sup>82</sup> Transcript, Volume 1, p. 177.

- the call must use voice verification (as opposed to using button tones to confirm understanding, e.g. press 1 for "yes" or 2 for "no");
- the call must include a verifiable record of the incoming or outgoing telephone number dialed to/from the Consumer to complete the call; and

the Gas Marketer must review a minimum of X% all of the calls for quality assurance.

In order to ensure the customer successfully completed the verification in accordance with the requirements set out under Article 33 each call must be reviewed. **Therefore, the Panel considers the requirement that gas marketers must review all automated TPV calls is warranted.**

The Panel accepts Access Gas' point that due to customer blocking functions, the record of the incoming or outgoing telephone number may not always be verifiable. **Because of this, the Panel has removed the word "verifiable" from the final approved wording.**

#### **4.8 Article 34, Modification to the Code of Conduct**

Commission staff proposed the following minor change, to clarify the process for modifying the Code of Conduct:

The Code shall be reviewed and modified, if required, at an annual general meeting, via written process and/or in-person, as established by the Commission. Modifications to the Code are subject to the approval of the Commission.

BCOAPO and the gas marketers have no comment or issues with the proposed changes. FEI agrees with the proposed changes.<sup>83</sup>

#### **Commission determination**

**The Panel determines the proposed changes to Article 34 are warranted to clarify the process for amending the Code of Conduct.**

#### **5.0 ISSUES NOT REQUIRING DETERMINATIONS**

This section outlines the issues raised for discussion at the AGM that do not require a Commission determination. These include: the update on customer complaints; customer protection education activities; program expansion following FEI amalgamation; and marketing disputes.

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<sup>83</sup> Exhibit B-5, p. 37.

## 5.1 Update on customer complaints

Commission staff presented data on customer complaints filed with the Commission in 2014 at the AGM, as requested by BCOAPO by letter dated March 27, 2015. In its final submission, BCOAPO requests that the customer complaint data be distributed in advance of the AGM going forward, “as it may affect the types of issues BCOAPO would like to see discussed at the meeting” and suggests that “it would be helpful if the reason for the complaint was tied to the resolution that resulted.”<sup>84</sup>

Access Gas requested that the complaints and disputes data be presented in the context of the number of gross enrollments going forward.<sup>85</sup>

Direct Energy “has no further comments on this issue other than to acknowledge/reiterate that the Customer Choice program already has the lowest complaints to sales ratio in any jurisdiction prior to the Code of Conduct amendments proposed by Commission staff in this AGM.”<sup>86</sup>

The Panel asks Commission staff to accommodate the future requests regarding customer complaints and disputes data, as outlined above.

## 5.2 Customer protection education activities

BCOAPO proposed to discuss “the connection between customer protection education activities and the findings from the Commission’s Dispute Process and Complaints” during the AGM.<sup>87</sup>

At the AGM, FEI stated that “the Customer Choice education plan focuses on program awareness and customer education, and through these measures, a level of customer protection is achieved. The education plan is not typically adjusted based on complaints and disputes lodged by customers. It is FEI’s responsibility to maintain neutrality, which is at odds with the concept of consumer protection as it relates to communications.”<sup>88</sup> FEI notes in their 2014 Customer Choice Annual Report “only in exceptional circumstances would the communications be adjusted to address a specific concern.”<sup>89</sup>

Access Gas, Direct Energy and Just Energy had no comment on this issue.

The Panel agrees with FEI that FEI’s responsibility to maintain neutrality is at odds with the concept of consumer protection as it relates to communications.

The Panel notes the scope of the Commission’s jurisdiction: licensing and overseeing gas marketers; developing the Rules for Gas Marketers and Code of Conduct for Gas Marketers; ensuring compliance thereto; and dealing with customer complaints regarding the activities of gas marketers and disputes regarding the validity of contracts. Any and all of which the Commission can respond to either on an individual case-by-case basis or by a compliance inquiry, depending on the severity of the matter.

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<sup>84</sup> BCOAPO Final Submission, p. 1.

<sup>85</sup> Transcript, Volume 1, pp. 12-13.

<sup>86</sup> Direct Energy Final Submission, p. 2.

<sup>87</sup> Exhibit C5-2, p. 1.

<sup>88</sup> Exhibit B-5, p. 7.

<sup>89</sup> Exhibit B-5, p. 7.

The Panel considers that consumer protection is adequately achieved by activities that are undertaken by the Commission to manage compliance with the Code of Conduct. FEI and the Commission will continue to undertake activities to address consumer protection within the parameters of their respective roles in the program.

### **5.3 Expansion of the Customer Choice program following FEI amalgamation**

FEI and BCOAPO raised the issue of the Customer Choice program becoming available on Vancouver Island, Whistler and the Sunshine Coast following FEI amalgamation for discussion during the AGM. At the AGM, FEI provided an update on the system infrastructure changes required to facilitate the program's expansion, as well as the intended Customer Education Plan for Vancouver Island and Whistler. Commission staff provided a review of the special licensing requirements for gas marketers wishing to operate in the new service territories for the period August 1, 2015 to October 31, 2015.

Intervenors had no further comments or concerns following on this item following the AGM.

In its reply submission, FEI provides information on the system infrastructure changes completed and customer education plan activities undertaken since the AGM, with respect to program expansion.<sup>90</sup>

As there are no further questions or concerns regarding this issue, no further action is warranted at this time.

### **5.4 Marketing disputes**

BCOAPO proposed to discuss "whether additional measures are required to ensure accuracy on [the agreement rate, term and marketer's identity] of the contract" during the AGM.<sup>91</sup>

BCOAPO rescinded the proposal to discuss marketing disputes during the AGM.<sup>92</sup>

Given that BCOAPO did not pursue this topic at the AGM, no further discussion or action is required.

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<sup>91</sup> Exhibit C5-2, p. 1.

<sup>92</sup> Transcript, Volume 1, p. 239.

**DATED** at the City of Vancouver, in the Province of British Columbia, this                    day of September 2015.

*Original signed by:*

---

D. A. Cote  
Panel Chair / Commissioner

*Original signed by:*

---

I. F. MacPhail  
Commissioner

*Original signed by:*

---

H. G. Harowitz  
Commissioner



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER A-12-15**

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IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.  
Customer Choice Program Seventh Annual General Meeting

**BEFORE:** D. A. Cote, Panel Chair / Commissioner  
H. G. Harowitz, Commissioner  
I. F. MacPhail, Commissioner  
September 29, 2015

**O R D E R**

**WHEREAS:**

- A. FortisBC Energy Inc. (FEI) obtained a Certificate of Public Convenience and Necessity (CPCN) on August 14, 2006 for the Commodity Unbundling Project for Residential Customers (Customer Choice) in accordance with the government's 2002 energy policy which allows for the direct sale of natural gas to residential and small volume commercial customers through gas marketing companies licensed by the British Columbia Utilities Commission (Commission);
- B. Article 34 of the Code of Conduct for Gas Marketers requires the Commission to hold an Annual General Meeting (AGM) to discuss program improvements or enhancements;
- C. On February 26, 2015, by Order A-2-15, the Commission established a preliminary regulatory timetable for the seventh AGM;
- D. In accordance with the Regulatory Timetable, FEI filed the Customer Choice program statistics for the 2014 calendar year on March 6, 2015; interveners and Commission staff submitted issues for discussion by March 27, 2015; and interveners submitted reply submissions on issues that warrant discussion and whether a written process or in-person meeting was warranted by April 10, 2015;
- E. On May 8, 2015, by Order A-3-15, the Commission established an in-person meeting and subsequent written process to address the issues requiring discussion, as outlined in Appendix B to that order;
- F. On May 28, 2015, Commission staff filed proposed changes to the Code of Conduct for Gas Marketers established by Order A-10-12 with FEI and interveners, for discussion during the remainder of the proceeding;



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**            A-12-15

2

- G. On June 9, 2015, the Commission hosted the seventh AGM for the Customer Choice program. Participants included FEI, Access Gas Services Inc., Bluestream Energy Inc., Direct Energy Marketing Ltd., Just Energy (BC) Limited Partnership, the BC Old Age Pensioners Organization *et al.* and Commission staff;
- H. On July 22, 2015, by Order A-4-15, the Commission revised the Regulatory Timetable in order to establish a deadline for the submission of an independent legal opinion on the issue of spousal authority and provide additional time for interveners to review and comment on the independent legal opinion prior to final submissions;
- I. Following the AGM, FEI filed the 2014 Customer Choice Annual Report, summarizing the issues raised and parties' positions at the AGM on June 30, 2015. Commission staff filed the independent legal opinion on the issue of spousal authority on July 2, 2015. Intervenors made final submissions on July 22, 2015 and FEI filed its reply submission on August 10, 2015; and
- J. The Commission has reviewed the information and submissions made during the proceeding.

**NOW THEREFORE** the British Columbia Utilities Commission orders as follows:

1. FortisBC Energy Inc. must submit an application regarding the Customer Choice program fee structure to the Commission by March 31, 2016.
2. The changes in the Ninth Revision of the Code of Conduct for Gas Marketers, attached as Appendix A to the decision issued concurrently with this order, are effective as of November 10, 2015, with one exception: the removal of the word "spouse" from Article 26, regarding residential signing authority, is effective immediately. Gas marketers must ensure full compliance with the changes to the Code of Conduct for Gas Marketers; and
3. All other directives set out in the decision issued concurrently with this order are effective, as outlined in the decision.

**DATED** at the City of Vancouver, in the Province of British Columbia, this            29<sup>th</sup>            of September 2015.

BY ORDER

*Original signed by:*

D. A. Cote  
Panel Chair / Commissioner

**CODE OF CONDUCT  
FOR GAS MARKETERS**

engaged in the

**COMMODITY UNBUNDLING SERVICE  
IN THE PROVINCE OF BRITISH COLUMBIA**

**Ninth Revision  
Effective November 10, 2015**

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**CODE OF CONDUCT  
FOR GAS MARKETERS**

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**COMMODITY UNBUNDLING SERVICE  
IN THE PROVINCE OF BRITISH COLUMBIA**

**Ninth Revision  
Effective November 10, 2015**

**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 online 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:

- **Account Holder** means the Consumer who is listed on the account with the LDC and who is responsible for the account.
- **Act** means the *Utilities Commission Act* of British Columbia as amended from time to time.
- **Agreement Amendment** means the change in price and/or term of the original Consumer's Agreement where the new agreement solicitation and/or enrolment are fully compliant with the Code.
- **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 LDC from the Gas Marketer. This will generally coincide with the date of the LDC 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 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.

- **Licence** means a licence 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 Licence.
- **Local Distribution Company (LDC)** 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, online marketing, telemarketing, direct mail selling activities, network marketing, multi-level marketing and any other means by which a Gas Marketer or its Salesperson interacts with a Consumer or potential 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 Agreement, 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 electronic process or telephone call between the Gas Marketer and the Consumer to confirm the Consumer’s understanding of the Offer, Consumer’s Agreement, Confirmation Letter and Cancellation Rights.

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

### ACCURACY

#### Article 1

The terms of any Offer and Consumer's Agreement 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 Agreement 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 Agreement 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 Agreement shall clearly state agreement renewal 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 Gas Marketers licensed to actively market and/or enrol customers shall submit to the LDC, by the third week of every month, the price that a customer can contract for in the upcoming month. The prices submitted by the Gas Marketers will be displayed in the price depository on the LDC's website.

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 Agreement 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 Agreement 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 the Consumer Agreement.

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, including the *British Columbia Business Practices and Consumer Protection Act* and related *Consumer Contracts Regulation*.

## GUARANTEES

### Article 5

Offers and Consumer's Agreement 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 Agreement. 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, email 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 Agreement, 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.



A Gas Marketer shall ensure that every Salesperson that is acting on its behalf and that is marketing to a Consumer in person:

- provides the Consumer with identity collateral that meets the requirements below, before making any representation to the Consumer about the Gas Marketer's products, services or business and before requesting any information about the Consumer, including asking that the Consumer locate any utility bills; and
- wears at all times, on the front of the Salesperson's outer clothing, an identification badge that meets the requirements below.

**Identity Collateral Requirements:**

The identity collateral shall be clear, legible and include the following information:

- (a) the name and address of the Gas Marketer;
- (b) the name and/or identification number of the Salesperson acting on behalf of the Gas Marketer;
- (c) the toll-free telephone number of the Gas Marketer; and
- (d) the website address of the Gas Marketer.

**Identification Badge Requirements:**

The identification badge shall be clear and legible and:

- (a) include a photograph of the Salesperson's face that is not more than 2 years old at any time;
- (b) identify the Gas Marketer; and
- (c) identify the name and identification number of the Salesperson acting on behalf of the Gas Marketer.

The Salesperson's photograph and all of the required information set out above must be shown on the same side of the identification badge, and must at all times be facing the Consumer.

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 Agreement;
- 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 Agreement 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 Agreement, 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;
- intended 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 Agreement;
- 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 Agreement will apply to the Consumer at the Consumer's new Premise provided that the new Premise is within the eligible service territory of the LDC providing the Commodity Unbundling Service;
  - the Consumer's Agreement will terminate upon the move if the Consumer provides reasonable proof to the Gas Marketer that the new Premise is outside of the eligible service territory or the

Consumer is no longer a customer of the LDC providing the Commodity Unbundling Service. Exit fees will not apply in this situation;

- cancellation provisions and rights of the Consumer including a mandatory 10-day Cancellation Period. 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;
- rights under the Consumer's Agreement with respect to assignments, transfers and sales to another Gas Marketer;
- any deposit, exit fees, administration fees, 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 Agreement shall be presented completely, accurately and truthfully.

## COMPLAINTS AND DISPUTE RESOLUTIONS

### Article 12

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 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.

The Gas Marketer and the Consumer must follow the guidelines approved by the Commission from time to time as they pertain to Customer Choice entitled Complaint Guidelines, Dispute Guidelines and Reconsideration Guidelines.

## SALESPERSON OPERATIONS

### RESPECT OF PRIVACY

#### Article 13

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.

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.

### HONESTY, FAIRNESS AND VERACITY

#### Article 14

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 Agreement 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 15

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 Agreement.

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 Gas Marketer, to enable them to give Consumers 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 16

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 17

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 18

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 19

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

### Article 20

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 21

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

## **TRAINING AND TESTING**

### Article 22

A Gas Marketer shall ensure that no Salesperson that acts on its behalf markets to a Consumer or negotiates, enters into, verifies, renews or amends a contract with a Consumer unless the Salesperson has successfully completed training as set out in this Code.

A Gas Marketer shall ensure that training includes the following for a Salesperson:

- a) training in relation to all of the legal and regulatory requirements applicable to the sales process, contract verification, consumer cancellation rights and the renewal or amendment process; and
- b) adequate and accurate material covering the following areas:
  - i. gas market structure;
  - ii. how to complete a contract;
  - iii. how gas pricing works, including the pricing of gas supplied by the LDC;
  - iv. the content of this Code; and
  - v. all relevant regulatory requirements.

A Gas Marketer shall determine the successful completion of training by means of a training test that is designed and administered in order to assess each Salesperson's knowledge of the elements listed above.

The Gas Marketer shall maintain, for each Salesperson that acts on its behalf, records of the training and testing materials and results. The records shall be provided to the Commission on request.

## 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 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 Agreement, 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 and shall not be used by the Gas Marketer or Salesperson when referring to the contract or contracting process. 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 a Title field next to Consumer's Name, to be completed by the signatory. For Residential Consumers, the signatory may be the Account Holder or a legally authorized representative. For Commercial Consumers, the signatory must confirm that he/she is authorized 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;
- 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 Agreement may only be terminated on the anniversary date; and
- Conditions which may affect the price or term of the Offer.

The Consumer's Agreement must also include a date signed field (beside the Consumer's signature); to be completed by the signatory at the time the contract or agreement is signed.

The Consumer's Agreement must comply with all applicable federal and provincial Consumer protection and business practice legislation, including the *British Columbia Business Practices and Consumer Protection Act* and related *Consumer Contracts Regulation*.

The minimum contract term is one year with a maximum contract term of no more than five years and the contract start date and contract end date must coincide with the program entry dates which fall on the 1<sup>st</sup> day of each month, e.g. July 1, 2012 to July 1, 2017.

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.

#### **NEW AGREEMENTS**

##### Article 27

In the case where a Consumer enters into an agreement with a Gas Marketer for the first time, the Gas Marketer shall obtain the Consumer's written signature or electronic signature on the Consumer Agreement. In the case of electronic signature, the Gas Marketer shall ensure all applicable requirements under the *British Columbia Electronic Transactions Act* are met.

Voice contracting is not allowed for new agreements.

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 (written or electronic) Consumer Agreement from the Consumer.

## RENEWAL OF AGREEMENTS

### Article 28

#### **Renewal Package**

Should the Gas Marketer want to renew a Consumer's Agreement, the Gas Marketer shall give written notice in the form of a renewal package delivered to the Consumer no less than 90 days prior to the applicable renewal date, via one or more of the following methods: mail, facsimile or email. The renewal package must include a new Consumer's Agreement which shall contain all essential terms of the Offer and complete terms and conditions. A new Notice of Appointment is not necessary.

The Consumer shall have 30 days after the receipt of written notice from the Gas Marketer to execute the renewal agreement or the contract will expire. In the event the Consumer does not respond to the renewal package, the Consumer's LDC will return to being the natural gas supplier at the end of the contract.

The timing of written notices (delivery of renewal packages) must align with notice periods on entry dates on the 1<sup>st</sup> day of the month to permit a Consumer to change Gas Marketers upon expiry or cancellation of an existing agreement.

The renewal date shall be such that it coincides with the program entry date on the 1<sup>st</sup> day of the month following the effective end date of the contract being renewed.

The Consumer shall have the option to execute the renewal agreement via agreement with a written or electronic signature or voice contracting.

#### **Consumer Agreement with written or electronic signature**

The Gas Marketer shall obtain the Consumer's written signature or electronic signature on the Consumer's Agreement. In the case of electronic signature, the Gas Marketer shall ensure all applicable requirements under the *British Columbia Electronic Transactions Act* are met. 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 Consumer Agreement from the Consumer.

The TPV is not required if the Consumer executes the Agreement with no contact by a Salesperson, through any means (e.g. in-person, telephone, online), at the time of contracting.

#### **Consumer Agreement via voice contract**

Renewal Consumer Agreements may be executed via voice contracting. The Gas Marketer will file with the Commission for its comment and approval the new voice contracting script and/or as soon as changes are made to the voice contracting script, prior to its commercial use. The script shall include all matters that are required in the TPV script. Provided all requirements of the TPV are met in the approved voice contracting script, a TPV is not necessary.

The Consumer must receive comprehensive and complete contract renewal information in the form of a renewal package before a telephone solicitation call is made. Before the renewal may proceed, the Consumer must confirm that the renewal information has been received.

The voice contracting call will be in 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.

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.

#### **AMENDMENT OF AGREEMENTS**

##### Article 28

The Consumer shall have the option to amend the Consumer Agreement via agreement with a written or electronic signature or voice contracting. See Article 27 for the agreement and TPV requirements, which apply to both renewal and amendment of agreements.

Since the enrolment of the amended agreement will automatically trigger a confirmation letter notifying the Consumer of the 10-day Cancellation Period, if the Consumer elects to use this Cancellation Period, the terms and conditions of the original agreement will be reinstated.

#### **CANCELLATION OF AGREEMENTS**

##### Article 29

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 30

A Gas Marketer shall not assign, sell or otherwise transfer the Consumer 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 Agreements to another Gas Marketer shall be approved in advance by the Commission.

## RESPONSIBILITY FOR CODE OBSERVANCE

### Article 31

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 Agreement, 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 32

The LDC 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 33

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; or electronic process, wherein the Gas Marketer sends a website link by email to the Consumer to an electronic verification form. Regardless of the method of TPV (telephone or electronic) all requirements set out below apply.

The Salesperson must conduct the TPV call clearly in an understandable pace and tone.

For Residential and Rate Schedule 2 customers, the TPV must not occur until 24 hours after the Consumer executes the contract, and in order to complete the sale, must occur within 20 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. The Salesperson is not permitted to be on the premise during the TPV 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 the TPV must occur within 20 calendar days of the Consumer executing the contract.

The TPV 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.

The TPV is not required if the Consumer executes the Agreement with no contact by a Salesperson, through any means (e.g. in-person, telephone, online), at the time of contracting.

**Additional requirements for automated TPV calls:**

The following additional requirements are in place for the use of automated TPV calls (i.e. where a live-person is not conducting the TPV call):

- the call must use voice verification (as opposed to using button tones to confirm understanding, e.g. press 1 for "yes" or 2 for "no");
- the call must include a record of the incoming or outgoing telephone number dialed to/from the Consumer to complete the call; and
- the Gas Marketer must review all of the calls.

**Additional requirements for electronic TPV:**

The following additional requirements are in place for the use of electronic TPV:

- Where permitted, the Gas Marketer shall send an email to the Consumer with a link to the electronic verification website. Access to the electronic TPV process is only possible via the email link.
- The electronic verification questionnaire must follow the required TPV script.
- The Gas Marketer must submit all electronic TPV materials to Commission staff for review and approval prior to commercial distribution and/or use. The Gas Marketer must retain, and submit to the Commission upon request, a record of the email sent to the Consumer regarding the TPV and a record of the Consumer's electronic verification.

**Residential Consumers**

For Residential Consumers, the TPV must follow the standardized scripting set out below. The Commission will not allow additions or deviations from the standardized script at this time. If the Gas Marketer wishes to request an amendment to the standardized script, the Gas Marketer may file the modified TPV script with Commission staff for comment and approval.

*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  

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 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" [x dollars and x cents per gigajoule] for a term of "TERM" years? Y/N  

If applicable: 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 right to cancel without penalty during the 10 day cancellation period, or if the customer waived the right, confirmation that the customers has done so.
8. Confirmation that the customer understands that entering into the agreement may not result in saving money.

## MODIFICATION TO THE CODE

### Article 34

The Code shall be reviewed and modified, if required, at an annual general meeting, via written process and/or in-person, as established by the Commission. Modifications to the Code are subject to the approval of the Commission.

## Unopposed Changes to Code of Conduct for Gas Marketers

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This Appendix provides a historical record of the unopposed changes to the Code of Conduct; the discussion regarding these proposed changes during the AGM; and parties' submissions on the proposals following the AGM.

### 1.0 Unopposed changes – final wording

The table below outlines the final revised wording for the unopposed changes, as approved by the Panel in the attached decision. Deletions are shown in strikethrough font and additions are in underlined and italicized font. The page numbers listed by each article reference the relevant page number in the Code of Conduct for Gas Marketers currently in effect, established by Order A-10-12.

Article	Revised wording
Consumer Agreement definition, p. 4	Consumer's Agreement(s) means all <del>written</del> agreements and contracts between a Gas Marketer and a Consumer for the Marketing of Gas.
Internet Marketing definition, p. 5	<del>Internet Marketing means marketing of natural gas that uses the Internet, e-mail or mobile device without a Salesperson's presence and/or involvement. (Definition is deleted from Code of Conduct)</del>
Marketing definition, p. 5	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, <del>internet</del> <u>online marketing</u> , telemarketing, direct mail selling activities, <u>network marketing, multi-level marketing</u> and any other means by which a Gas Marketer or its Salesperson interacts <del>directly</del> with a Consumer or potential Consumer.
Article 2, Price and Other Terms, p. 6	The Offer and Consumer's Agreement shall clearly state agreement renewal provisions <del>including default rollover provisions.</del>
Article 4, Protection, p. 7	This Code shall be interpreted in accordance with all applicable federal and provincial Consumer protection and business practice legislation, <u>including the British Columbia Business Practices and Consumer Protection Act and related Consumer Contracts Regulation.</u>
Article 12, Telephone, Door to Door and Internet Marketing, p. 11	Delete Article 12



<p>Article 14, Respect of Privacy, p. 12</p>	<p><u>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.</u></p>
<p>Article XX, Training and Testing, p. 15</p>	<p><u>A Gas Marketer shall ensure that no Salesperson that acts on its behalf markets to a Consumer or negotiates, enters into, verifies, renews, or amends a contract with a Consumer unless the Salesperson has successfully completed training as set out in this Code.</u></p> <p><u>A Gas Marketer shall ensure that training includes the following for a Salesperson:</u></p> <ul style="list-style-type: none"> <li>a) <u>training in relation to all of the legal and regulatory requirements applicable to the sales process, contract verification, consumer cancellation rights and the renewal or amendment process; and</u></li> <li>b) <u>adequate and accurate material covering the following areas:</u> <ul style="list-style-type: none"> <li>i. <u>gas market structure;</u></li> <li>ii. <u>how to complete a contract;</u></li> <li>iii. <u>how gas pricing works, including the pricing of gas supplied by the LDC;</u></li> <li>iv. <u>the content of this Code; and</u></li> <li>v. <u>all relevant regulatory requirements.</u></li> </ul> </li> </ul> <p><u>A Gas Marketer shall determine the successful completion of training by means of a training test that is designed and administered in order to assess each Salesperson’s knowledge of the elements listed above.</u></p> <p><u>The Gas Marketer shall maintain, for each Salesperson that acts on its behalf, records of the training and testing materials and results. The records shall be provided to the Commission on request.</u></p>
<p>Article 23, Information to be maintained by a gas marketer, p. 16</p>	<p>A list of all Salespersons and sub-contractors who act for that Gas Marketer.</p>
<p>Article 26, use of word “enrollment” in first paragraph, p. 17</p>	<p>The Consumer’s Agreement, 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 <u>and shall not be used by the Gas Marketer or Salesperson when referring to the contract or contracting process.</u> There should be no confusion in the mind of the customer that this is a binding contract and not an application or enrollment.</p>

<p>Article 26, title field, second paragraph, p. 18</p>	<p>The agreement must include <u>a Title field</u> next to Consumer's Name, <u>to be completed by the signatory</u> as part of the confirmation that the Consumer has the signing authority to enter into the agreement.</p>
<p>Article 26, minor changes, p. 18</p>	<p>Renewal provisions <del>(type, frequency, dates)</del> including default rollover provisions;</p> <p>The Consumer's Agreement must also include a fill-in date <u>signed field</u> (beside the Consumer's signature), <u>to be completed by the signatory</u> for the Consumer to complete at the time the contract or agreement is signed.</p> <p><u>The Consumer's Agreement must comply with all applicable federal and provincial Consumer protection and business practice legislation, including the British Columbia Business Practices and Consumer Protection Act and related Consumer Contracts Regulation.</u></p>
<p>Article 27, Renewal of Agreements, p. 19</p>	<p><b>Renewal Package</b></p> <p>Should the Gas Marketer want to renew a Consumer's Agreement, the Gas Marketer shall give written notice in the form of a renewal package <u>delivered</u> to the Consumer no less than 90 days prior to the applicable renewal date, <u>via one or more of the following methods: mail, facsimile or email. The renewal package must include a new Consumer's Agreement which shall contain all essential terms of the Offer and complete terms and conditions. A new Notice of Appointment is not necessary.</u></p> <p>The Consumer shall have 30 days after the receipt of written notice from the Gas Marketer to <u>execute the renewal agreement</u> <del>select renewal terms</del> or the contract will expire. <u>In the event the Consumer does not respond to the renewal package, the Consumer's LDC will return to being the natural gas supplier at the end of the contract.</u></p> <ul style="list-style-type: none"> <li>● <del>The Consumer shall have the option to accept the new contract via written agreement, electronic transaction or voice contracting;</del></li> <li>● <del>In the event the Consumer does not respond to the renewal package, the Consumer's LDC will return to being the natural gas supplier at the end of the contract.</del></li> </ul> <p>The timing of <u>written</u> notices (<u>delivery of renewal packages</u>) must align with notice periods on entry dates on the 1<sup>st</sup> day of the month to permit a Consumer to change Gas Marketers upon expiry or cancellation of an existing agreement.</p> <p>The renewal date shall be such that it coincides with the program entry date on the 1<sup>st</sup> day of the month following the effective end date of the contract being renewed.</p> <p><u>The Consumer shall have the option to execute the renewal agreement via agreement with a written or electronic signature or voice contracting.</u></p>

**Paper Contract**

In instances where a Consumer is responding in writing to written material which is fully compliant with the Code, a TPV 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. The Gas Marketer shall accept a written or electronic signature.~~

**Consumer Agreement with written or electronic signature**

The Gas Marketer shall obtain the Consumer's written signature or electronic signature on the Consumer's Agreement. In the case of electronic signature, the Gas Marketer shall ensure all applicable requirements under the British Columbia Electronic Transactions Act are met. 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 Consumer Agreement from the Consumer.

The TPV call is not required if the Consumer executes the Agreement with no contact by a Salesperson, through any means (e.g. in-person, telephone, online, etc.), at the time of contracting.<sup>93</sup>

**~~Voice Contract~~**

**Consumer Agreement via voice contract**

~~Contract~~ Renewal Consumer Agreements may be ~~completed~~ executed via voice contracting ~~with the Account Holder~~. The Gas Marketer will file with the Commission for its comment and approval the new voice contracting script and or as soon as changes are made to the voice contracting script, and prior to its commercial use. The script shall include all matters that are required in the TPV call. ~~Providing~~ Providing all the requirements of the TPV call are met in the approved voice contracting script, a ~~second~~ TPV call is not necessary.

The Consumer must receive comprehensive and complete contract renewal information in the form of a renewal package before a telephone solicitation call is made. Before the renewal may proceed, the Consumer must confirm that the renewal information has been received.

The voice contracting call will be in 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.

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

<sup>93</sup> See Section 4.6 for determination regarding TPV requirement wording.

	Agreement.
Article 28, Amendment of Agreements, pp. 20-21	<p><u>The Consumer shall have the option to amend the Consumer Agreement via agreement with a written or electronic signature or voice contracting. The Agreement Amendment may be executed in writing, through electronic transaction or via voice contracting. See Article XX above for the agreement and TPV call requirements, which apply to both renewal and amendment of agreements.</u></p> <p>Paper Contract – In instances where a Consumer is responding in writing to written material which is fully compliant with the Code, a TPV call is not required. In case of acceptance, the acceptance of an agreement amendment offer must be provided to and obtained from the Account Holder. The Gas Marketer shall accept a written or electronic signature.</p> <p>Since the enrolment of the amended agreement will automatically trigger a confirmation letter notifying the Consumer of the 10-day Cancellation Period, if the Consumer elects to use this Cancellation Period, the terms and conditions of the original agreement will be reinstated.</p>
Article 33, Understandable pace and tone, p. 22	<u>The Salesperson must conduct the TPV call clearly in an understandable pace and tone.</u>
Article 33, Residential TPV Script, Question 4, p. 24	<p>Are you the FortisBC account holder? Y/N</p> <p>If no – are you <del>the spouse or</del> legally authorized to enter into a contract/agreement for this residence/premise on behalf of the account holder?<sup>94</sup></p>
Article 33, Residential TPV Script, Question 7, p. 25	Do you understand that we will be supplying your natural gas at a fixed rate of “PRICE” [x dollars and x cents per gigajoule] for a term of “TERM” years? Y/N
Article 33, Commercial TPV script, Question 8, p. 26	8. Confirmation that the customer understands that <u>entering into</u> the agreement may not <u>result in saving</u> money.”

## 2.0 Proposals and submissions

This section provides a historical record of the unopposed proposed changes to the Code of Conduct and the parties’ submissions on the proposals.

<sup>94</sup> Script updated to ensure consistency with determination regarding spouse; see Section 3.4 for more information on the removal of the word spouse from Article 26, regarding residential signing authority.

## 2.1 Definitions

Commission staff proposed amendments to three Code of Conduct definitions, outlined below.

### 2.1.1 Consumer Agreement, p. 4

Consumer's Agreement(s) means all ~~written~~ agreements and contracts between a Gas Marketer and a Consumer for the Marketing of Gas.

Commission staff did not raise this proposal for discussion at the AGM as it represents a minor, housekeeping change. Staff drafted the change on the basis that written agreements are only one type of consumer agreement that can be entered into between a customer and gas marketer and thus the definition is not accurate.

The only party to comment on this proposal is FEI, who "suggests adjusting so that the copy specifically addresses, '... all written, recorded voice, and electronic agreements...'"<sup>95</sup>

### 2.1.2 Internet Marketing, p. 5

~~Internet Marketing means marketing of natural gas that uses the Internet, e-mail or mobile device without a Salesperson's presence and/or involvement.~~

During the AGM, Commission staff proposed to delete the internet marketing definition on the basis that it was causing confusion regarding the requirement for the Third Party Verification (TPV) call. Staff noted "we did have a case where a marketer thought that if the customer contracted online a TPV was not required. So the proposal is to delete the definition here, and deal with what we mean about where a TPV is required when we are talking about TPV in article 33 and get away from relying on this definition."<sup>96</sup> Staff also noted internet marketing is the only marketing method defined which is inconsistent with the Code of Conduct's treatment of all other marketing methods.

In response to this proposal at the AGM, BCOAPO did not object to the change and all other parties noted they would wait to comment until the discussion on Article 33.

During the discussion on Article 33 and in the written submissions following the AGM, no party opposed this change. In its final submission, FEI states that it does not oppose the change.

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<sup>95</sup> Exhibit B-5, p. 16.

<sup>96</sup> Transcript Volume 1, pp. 66-67.

### 2.1.3 Marketing, p. 5

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~~ *online marketing*, telemarketing, direct mail selling activities, *network marketing, multi-level marketing* and any other means by which a Gas Marketer or its Salesperson ~~interacts directly with~~ *markets to* a Consumer or potential Consumer.

Staff proposed the above change to ensure the definition of marketing captures all of the marketing methods used by gas marketers in BC and to remove the vague wording regarding interacting directly with consumers.

At the AGM, BCOAPO noted replacing "interacts directly" with "markets to" simply replaces vague wording with circular wording, by referring back to the word being defined.<sup>97</sup> Staff agreed with BCOAPO and suggested an amended proposal, whereby the words "directly with" would be deleted, and "interacts" would remain, as outlined below:<sup>98</sup>

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~~ *online marketing*, telemarketing, direct mail selling activities, **network marketing, multi-level marketing** and any other means by which a Gas Marketer or its Salesperson ~~interacts directly with~~ a Consumer or potential Consumer.

In its final submission, FEI supports the amended proposal outlined above. No party opposes the proposal.

## 2.2 **Article 2, Price and other terms, p. 6**

The Offer and Consumer's Agreement shall clearly state agreement renewal provisions ~~including default rollover provisions.~~

Commission staff proposed the above deletion on the basis that automatic renewals are no longer allowed under the Code of Conduct. As such, it is no longer applicable to list default rollover provisions on the Offer and Consumers Agreement.

FEI, BCOAPO, Bluestream Energy and Direct Energy approved this change at the AGM. Access Gas and Just Energy had no comment.

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<sup>97</sup> Transcript Volume 1, p. 70.

<sup>98</sup> Transcript, Volume 1, p. 71.

### 2.3 Article 4, Protection, p. 7

This Code shall be interpreted in accordance with all applicable federal and provincial Consumer protection and business practice legislation, including the British Columbia Business Practices and Consumer Protection Act and related Consumer Contracts Regulation.

Commission staff proposed the above addition to highlight the relevant consumer protection and business practice legislation in BC to gas marketers, many of whom operate in other jurisdictions.

BCOAPO, Bluestream Energy and Direct Energy approved this change at the AGM. FEI, Access Gas and Just Energy had no comment.

### 2.4 Article 12, Telephone, door to door and internet marketing, p. 11

At the AGM, Commission staff proposed to delete Article 12 which covers requirements for telephone, door-to-door and internet marketing. Staff noted this section could cause confusion by inferring that requirements only exist for these three marketing methods, when other marketing methods exist and are employed. In addition, staff noted the requirements listed in Article 12 are already included in the Code of Conduct elsewhere, or could be easily moved elsewhere in the Code of Conduct, as proposed by staff in later articles.<sup>99</sup>

At the AGM Access Gas, Just Energy and Direct Energy stated they had no issues with the proposal but would reserve comment.<sup>100</sup> Access Gas, Just Energy and Direct Energy did not submit comments directly related to this issue following the AGM.

Bluestream Energy and BCOAPO have no issues with the proposal.<sup>101</sup>

FEI supports the deletion and notes the “content additions elsewhere in the Code of Conduct must appropriately speak to the Article’s content.”<sup>102</sup>

### 2.5 Article 26, Agreement specifications, pp. 17–18

#### 2.5.1 Use of word “enrollment”, first paragraph

Under the current Code of Conduct, Article 26 requires that there should be no confusion in the mind of the customer that the Consumer Agreement is a binding contract and not an application or enrollment. Commission staff proposed to add a requirement under Article 26, for clarity, that the terms “application” and “enrollment” shall not be used by the gas marketer or salesperson in the marketing or contracting process.

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<sup>99</sup> Transcript Volume 1, pp. 83–85.

<sup>100</sup> Transcript Volume 1, p. 85.

<sup>101</sup> Ibid.

<sup>102</sup> Exhibit B-5, p. 22.

During the AGM, participants agreed the use of the word “enrollment” can be used as defined in the Code of Conduct, in that gas marketers submit an enrollment to FEI once all requirements for activating a Consumer Agreement have been met.

Based on staff’s proposal, Access Gas proposed slightly modified wording for the addition to Article 26, as outlined below:<sup>103</sup>

The Consumer’s Agreement, 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 and shall not be used by the Gas Marketer or Salesperson when referring to the contract or contracting process. There should be no confusion in the mind of the customer that this is a binding contract and not an application or enrollment.

During the AGM, all parties agreed to the above wording, as proposed by Commission staff and Access Gas.<sup>104</sup>

In its final submission, Just Energy proposes slightly alternate wording:<sup>105</sup>

The terms “Application” or “Enrollment” do not accurately reflect the agreement made between the Marketer and the Consumer and shall not be used by the Gas Marketer or Salesperson when referring to the contract/Agreement.

#### 2.5.2 Title field, second paragraph

Commission staff proposed the following change in order to ensure the signatory completes the Title field on the Consumer Agreement as opposed to sales representatives, who have an incentive to enter a title that suggests signing authority, for both residential and commercial customers:

The agreement must include a Title field next to Consumer’s Name, to be completed by the signatory as part of the confirmation that the Consumer has the signing authority to enter into the agreement.

Staff noted two instances in the past year where the customer submitted a copy of the Consumer Agreement as evidence in a dispute where the Title field was blank, while the Title field on the gas marketer’s copy of the

<sup>103</sup> Transcript, Volume 1, p. 89.

<sup>104</sup> Transcript, Volume 1, pp. 89–90.

<sup>105</sup> Just Energy Final Submission, p. 2.



Consumer Agreement had been completed, and the signatory took issue with the title listed.<sup>106</sup> While rare, staff noted concern regarding salespersons entering the signatory's title on his/her behalf.

At the AGM, Access Gas, Bluestream Energy, Direct Energy and BCOAPO supported the proposal.<sup>107</sup>

Just Energy supports the spirit of the change but questions "the necessity of the change given that during the AGM, BCUC Staff advised that the occurrence of complaints related to the title fields on contracts were 'rare'."<sup>108</sup>

FEI suggests limiting the clause to "commercial customers as the copy is not applicable to residential customers."<sup>109</sup>

### 2.5.3 Remaining proposed changes to Article 26

Finally, Commission staff proposed the following minor changes to Article 26, which were uncontested by FEI and interveners, outlined below:

Renewal provisions (type, frequency, dates) including default rollover provisions; and

The Consumer's Agreement must also include a fill-in date signed field (beside the Consumer's signature), to be completed by the signatory for the Consumer to complete at the time the contract or agreement is signed.

The Consumer's Agreement must comply with all applicable federal and provincial Consumer protection and business practice legislation, including the British Columbia Business Practices and Consumer Protection Act and related Consumer Contracts Regulation.

## 2.6 Article 27, Renewal of agreements, p. 19

Commission staff proposed the changes outlined below to provide greater clarity by restructuring the article, re-ordering some of the requirements and clarifying that the renewal package must be delivered in writing, via mail, facsimile or email:

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<sup>106</sup> Transcript, Volume 1 p. 90.

<sup>107</sup> Transcript, Volume 1, p. 91.

<sup>108</sup> Just Energy Final Submission, p. 2.

<sup>109</sup> Exhibit B-5, p. 25.

## Renewal Package

The Gas Marketer shall give written notice in the form of a renewal package *delivered* to the Consumer no less than 90 days prior to the applicable renewal date, via one or more of the following methods: mail, facsimile or email. The renewal package must include a new Consumer's Agreement which shall contain all essential terms of the Offer and complete terms and conditions. A new Notice of Appointment is not necessary.

The Consumer shall have 30 days after the receipt of written notice from the Gas Marketer to *execute the renewal agreement* ~~select renewal terms~~ or the contract will expire. In the event the Consumer does not respond to the renewal package, the Consumer's LDC will return to being the natural gas supplier at the end of the contract.

~~The Consumer shall have the option to accept the new contract via written agreement, electronic transaction or voice contracting;~~

~~In the event the Consumer does not respond to the renewal package, the Consumer's LDC will return to being the natural gas supplier at the end of the contract.~~

The timing of *written* notices (*delivery of renewal packages*) must align with notice periods on entry dates on the 1<sup>st</sup> day of the month to permit a Consumer to change Gas Marketers upon expiry or cancellation of an existing agreement.

The renewal date shall be such that it coincides with the program entry date on the 1<sup>st</sup> day of the month following the effective end date of the contract being renewed.

The Consumer shall have the option to execute the renewal agreement via agreement with a written or electronic signature or voice contracting.

## ~~Paper Contract~~

~~In instances where a Consumer is responding in writing to written material which is fully compliant with the Code, a TPV 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. The Gas Marketer shall accept a written or electronic signature.~~

## Consumer Agreement with written or electronic signature

The Gas Marketer shall obtain the Consumer's written signature or electronic signature on the Consumer's Agreement. In the case of electronic signature, the Gas Marketer shall ensure all applicable

requirements under the British Columbia Electronic Transactions Act are met. 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 Consumer Agreement from the Consumer.

The TPV call is not required if the Consumer executes the Consumer Agreement with no contact by a Salesperson, through any means (e.g. in-person, telephone, online, etc.), in the Marketing or contracting process.

### **~~Voice Contract~~**

#### **Consumer Agreement via voice contract**

~~Contract~~ Renewal Consumer Agreements may be ~~completed~~ executed via voice contracting ~~with the Account Holder~~. The Gas Marketer will file with the Commission for its comment and approval the new voice contracting script and/or as soon as changes are made to the voice contracting script, ~~and~~ prior to its commercial use. The script shall include all matters that are required in the TPV call. ~~Providing~~ ~~ing~~ all the requirements of the TPV call are met in the approved voice contracting script, a ~~second~~ TPV call is not necessary.

The Consumer must receive comprehensive and complete contract renewal information in the form of a renewal package before a telephone solicitation call is made. Before the renewal may proceed, the Consumer must confirm that the renewal information has been received.

The voice contracting call will be in 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.

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.

Comments on the TPV requirement wording under "Consumer Agreement with written or electronic signature" were deferred to the discussion on Article 33.

Access Gas stated that the proposed wording requires that gas marketers send out a renewal package and noted gas marketers may not wish to renew an agreement. In response, Commission staff suggested adding "In order to renew a customer" to the beginning of the first sentence in the first paragraph under to address Access Gas' point.<sup>110</sup> Following the AGM, the gas marketers proposed the following wording be added to the beginning of the paragraph instead: "Should the Gas Marketer want to renew a Consumer's Agreement..."<sup>111</sup>

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<sup>110</sup> Transcript, Volume 1, p. 128.

<sup>111</sup> Exhibit B-5, p. 30.

Access Gas, Bluestream Energy, Just Energy, Direct Energy and BCOAPO either supported or had no comment on the proposed changes to Article 27, except for the wording regarding the TPV requirement, which was deferred to a later discussion, as noted above.<sup>112</sup> FEI has no comment on the matter.<sup>113</sup>

## 2.7 Article 28, Amendment of agreements, pp. 20–21

Commission staff proposed the following changes to Article 28 to reduce repetition given the significant overlap in the requirements for renewal and amendment of agreements:

The Consumer shall have the option to amend the Consumer Agreement via agreement with a written or electronic signature or voice contracting. ~~The Agreement Amendment may be executed in writing, through electronic transaction or via voice contracting.~~ See Article XX above for the agreement and TPV call requirements, which apply to both renewal and amendment of agreements.

~~Paper Contract—In instances where a Consumer is responding in writing to written material which is fully compliant with the Code, a TPV call is not required. In case of acceptance, the acceptance of an agreement amendment offer must be provided to and obtained from the Account Holder. The Gas Marketer shall accept a written or electronic signature.~~

Since the enrolment of the amended agreement will automatically trigger a confirmation letter notifying the Consumer of the 10-day Cancellation Period, if the Consumer elects to use this Cancellation Period, the terms and conditions of the original agreement will be reinstated.

No comments were submitted on the proposal.

## 2.8 Article 33, Third Party Verification, pp. 22–26

### 2.8.1 Understandable pace and tone, p. 22

Commission staff proposed adding the following wording as a result of receiving complaints and disputes that the TPV call was rushed, unclear, or the customer did not fully understand what was being asked during the call:

The Salesperson must conduct the TPV call clearly in an understandable pace and tone.

FEI and interveners either had no issue or agreed with the proposal.

<sup>112</sup> Transcript, Volume 1, pp. 129-130.

<sup>113</sup> Exhibit B-5, p. 30.

2.8.2 Residential TPV script, Question 4, p. 24

Commission staff noted changes to the residential TPV script Question 4 regarding signing authority would be required to ensure consistency if changes were made to the residential signing authority wording under Article 26.

2.8.3 Residential TPV script, Question 7, p. 20

Commission staff proposed the following change to Question 7:

7. Do you understand that we will be supplying your natural gas at a fixed rate of "PRICE" [*x dollars and x cents per gigajoule*] for a term of "TERM" years? Y/N

FEI, BCOAPO and the gas marketers support staff's proposed change to Question 7.

2.8.4 Commercial TPV script, Question 8, p. 21

Regarding the commercial TPV script, Commission staff proposed minor grammar changes to Question 8, as outlined below:

8. Confirmation that the customer understands that *entering into* the agreement may not *result in savinge* money.

FEI, BCOAPO and the gas marketers support staff's proposed changes.