



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-46-08

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

and

Access Gas Services Inc.
Breach of the Code of Conduct for Gas Marketers

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

O R D E R

WHEREAS:

- A. By email dated February 19, 2008, the Commission received a customer complaint regarding a sales call by a representative of Access Gas Services Inc. ("Access"), who is identified by name and agent ID, at the Customer's North Vancouver home on February 19, 2008; and
- B. The Commission, by letter dated February 21, 2008, notified Access of the customer complaint and initiated a written hearing into the matter, offering Access an opportunity to comment on the customer complaint, specifically as the alleged behaviour relates to the Code of Conduct for Gas Marketers ("Code of Conduct"); and
- C. Access responded by letter dated February 25, 2008, apologizing to the Customer and noting that this incident is the agent's first complaint. Access also stated that the issue had been discussed with the agent's field trainer to ensure that new agents are being trained to sell in accordance with Access' sales standards and the Code of Conduct; and
- D. The Commission finds that Access has violated Articles 9, 15, and 16 of the Code of Conduct.

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

1. Within 30 calendar days of the date of this Order, Access will pay to the Commission a financial penalty of \$1,000.00 for this breach of the Code of Conduct, for a total penalty pursuant to this Order of \$1,000.00 as set out in the Reasons for Decision attached as Appendix A.
2. Access will, within 14 days of the date of this Order, submit a plan whereby it will achieve close monitoring by Access of independent representative activity.

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3. Access will, within 14 days of the date of this Order, provide Code of Conduct re-training to all agents in British Columbia and have all agents certify to the Commission that they have been instructed in and fully understand the Code of Conduct. Any agent not in compliance with this Order may not engage in any marketing activity until such time as they are in compliance.
4. Prior to commencing marketing activity, new agents must be similarly trained to act in accordance with the Code of Conduct and certify to the Commission that they have been instructed in and fully understand the Code of Conduct. Any new agent not in compliance with this Order may not engage in any marketing activity until such time as they have received and certified that all appropriate training has been received.

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

BY ORDER

Original signed by

L.F. Kelsey
Commissioner

Attachment

Access Gas Services Inc.
Breach of the Code of Conduct for Gas Marketers

REASONS FOR DECISION

1.0 BACKGROUND

By email dated February 19, 2008, Mr. Altamirano (“Customer”) describes a sales call made to his home in North Vancouver by an agent from Access Gas Services Inc. (“Access”). The Customer states that the agent whom the Customer identifies by name and agent number, told him about a new opportunity to get natural gas at fixed prices. The Customer stated that he told the agent that he wanted to stay with Terasen Gas and keep the variable rate option. The Customer stated that the agent then advised him that “we need to sign up for the program, regardless of what option we would choose.” This statement is reported to have been repeated several times in the ensuing discussion. The Customer signed but after realizing later that they had signed a contract for “getting gas from Access Gas”, he cancelled the contract.

The Commission, by letter dated February 19, 2008, brought the matter to the attention of Access and identified two Articles in the Code of Conduct for Gas Marketers (“Code”) that relate to the circumstances described by the Customer. The Commission also advised Access that it had initiated a written hearing into the matter and offered Access an opportunity to comment on the customer complaint, specifically as the alleged behaviour relates to the Code.

2.0 ACCESS REPLY

By letter dated February 25, 2008 Access provided its reply comments (“Reply”). In the Reply, Access apologized to the customer for any inconvenience that the matter may have caused to the Customer. Access indicated that it reviewed the incident with the agent and reminded her of her responsibility to adhere to the Code. Access also reports, amongst other things, that it will continue to monitor the agent’s performance for compliance and have discussed the issue in detail with the agent’s field trainer to ensure that new agents are trained in accordance with Access’ sales standards as well as the Code.

3.0 CODE OF CONDUCT ARTICLES 9, 15, 16, AND 29

Article 9 states:

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

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

Article 15 states:

“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 terms of the Offer, Consumer’s Agreements or any other matter.

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

Article 16 states:

“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.

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

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

Article 29 states:

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

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

4.0 COMMISSION DETERMINATION

In its Reply, Access apologizes to the Customer for “any inconvenience this matter may have caused” but does not take a position as to whether the incident did or did not occur. The Commission is of the view that the probability is high that the incident did occur essentially as the Customer describes.

The conduct of the agent as described by the Customer is violation of Articles 9 and 15 of the Code of Conduct. In addition, it would seem from the Customer’s comments that they were only given an opportunity to read the entire contract form thoughtfully and without interruption after the contract had been signed, which is a violation of Article 16 of the Code.

The Commission determines that in this matter there are multiple violations of the Code, specifically Articles, 9, 15 and 16.

5.0 RULES FOR GAS MARKETERS

Section 10.0 of the Rules for Gas Marketers states:

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

- a) Suspend or cancel the Gas Marketer Licence.
- b) Amend the terms and conditions of, or impose new terms and conditions on the Gas Marketer Licence until the deficiencies are resolved.
- c) Apply penalties pursuant to Section 106(4) and (5) of the Act not to exceed \$10,000 for each day for each day such violation continues.
- d) Order that a portion or all of the performance security (referred to in Rule 9.0) be paid out to consumers, public utilities or other persons that the Commission considers to have been harmed by an act or omission of the Gas Marketer including a breach of the Act, the Rules, the Code of Conduct for Gas Marketers, or conditions of the Gas Marketer Licence.”

In determining an appropriate remedy or action to apply in this case, the Commission has considered Access’ statements in its letter of February 25, 2008. Access does not take a position on whether the incident occurred or not but does commit to monitoring the agent’s activity closely and discuss the issue in detail with the field trainer; both seen by the Commission to be positive steps. The Commission notes however, that Access refers to the agent as an independent representative. It is not clear to the Commission how close monitoring by Access of agent activity under this type of relationship may be achieved.

Adherence to the Code is essential to maintain the integrity of the Customer Choice Program and the primary responsibility for the observance of the Code of Conduct rests with the Gas Marketer. Being found to be non-compliant and not demonstrating an acceptance of responsibility for compliance is a serious matter. It is however, the first such finding against Access and therefore the action of the Commission is tempered somewhat.

The Commission applies a penalty of \$1,000 against Access.

Access must, within 14 days of the date of this Decision, submit a plan whereby it will achieve close monitoring by Access of independent representative activity.

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

Prior to commencing marketing activity, any new agents must be similarly trained to act in accordance with the Code of Conduct and certify to the Commission that they have been instructed in and fully understand the Code of Conduct. Any new agent not in compliance with this Order may not engage in any marketing activity until such time as they have received and certified that all appropriate training has been received.