



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-48-08

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

and

Summitt Energy BC L.P.  
Breach of the Code of Conduct for Gas Marketers

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

**O R D E R**

**WHEREAS:**

- A. On January 1, 2008, a Customer of Summitt Energy BC L.P. ("Summitt") logged a dispute through the Terasen Gas call centre requesting cancellation of a natural gas contract signed on June 8, 2007; and
- B. Summitt provided evidence in that dispute, including a Third Party Verification ("TPV") recording between Summitt and the Customer, confirming the terms and conditions of the agreement; and
- C. In reviewing the TPV, the Commission noted some possible areas of concern, such as, a line of questioning, information sharing, and the manner of presentation; and
- D. By letter dated January 17, 2008, the Commission advised Summitt that it was of the view that some of the information provided by the TPV agent may be misleading and was presented in a manner that may have caused confusion to the Customer. The Commission requested that Summitt provide its response to Commission regarding the agent's compliance; and
- E. By email dated January 31, 2008, Summitt advised the Commission that the Customer Service Representative was in compliance with the Code of Conduct for Gas Marketers ("Code of Conduct"), because a number of points were covered during the call; and
- F. By letter dated February 4, 2008, the Commission advised Summitt that it had initiated a written hearing with respect to Summitt's compliance with the Code of Conduct in this matter, and provided Summitt with a further opportunity to comment on the matter; and
- G. By email dated February 26, 2008, Summitt provided its response and advised the Commission that Summitt is of the opinion that the TPV is not in violation of the Code of Conduct; and
- H. The Commission finds that Summitt has violated the Scope of the Code of Conduct, certain Basic Principles of the Code of Conduct, and Articles 9, 15, and 16 of the Code of Conduct, and further, that Summitt is not in compliance with Commission Order No. G-73-07.

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**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, Summitt 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. Summitt must, within 14 days of this decision, review this Decision and the Code of Conduct with all agents engaged in TPV calls in the British Columbia market and each agent is to certify to the Commission that this requirement has been met and that they understand the Code of Conduct.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 19<sup>th</sup> day of March 2008.

**BY ORDER**

*Original signed by*

L.F. Kelsey  
Commissioner

Attachment

Summitt Energy BC L.P.  
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**REASONS FOR DECISION**

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**1.0 BACKGROUND**

On January 11, 2008, Ms. Wendy Hipp (“Customer”) filed a dispute through the Terasen Gas call center requesting cancellation of a natural gas contract signed June 8, 2007 with Summitt Energy BC L.P. (“Summitt”). Summitt provided evidence in the dispute including a recording of a Third Party Verification (“TPV”) call made by Summitt to the Customer. Summitt states that the verification call was made on June 18, 2007, which would be towards the end of the 10 day cancellation period; that period starting when an enrolment confirmation letter is initiated by Terasen Gas, several days after the contract is signed. The dispute was adjudicated in favour of the Customer.

Upon review of the TPV evidence provided by Summitt the British Columbia Utilities Commission (“Commission”) identified a line of questioning, information sharing and manner of presentation which may be considered a violation of the Code of Conduct for Gas Marketers (“Code of Conduct”). The Commission initiated a written hearing and by letter dated February 4, 2008, so advised Summitt. The Commission identified the relevant Articles in the Code of Conduct, and advised Summitt that the Code of Conduct provides for penalties in the event a Gas Marketer is found to be in violation of the Code of Conduct, and provided Summitt an opportunity to comment on the matter by February 19, 2008, prior to the Commission making a decision. By letter dated February 26, 2008 Summitt provided its response (“Reply”).

**2.0 VERIFICATION CALL**

In the TPV call the Customer states at the beginning of the call, and very definitively, that she “wants to cancel that”. The TPV agent immediately questions why the customer wants to do so and then in a rapid manner offers statistics and information, much of which is related to past history in another market. The Customer listens to the agent and asks several questions related to market price changes. The response from the agent provides comments about rates being higher in the winter and again, past savings, stated as being \$800.00 per year, obtained by customers in another market. The Customer concludes by asking “can I just think about it a little longer and phone back again”. The agent agrees but then reverts to the cancellation provision and advises the Customer to call back to cancel within that period otherwise Summitt will enroll the Customer in the Program.

**3.0 SUMMITT REPLY**

In its Reply, Summitt states that “[t]here is no indication during the TPV call that the customer was unduly pressured or harassed into enrolling in the program”. “The CSR is professional, relaxed and polite towards the customer”. Summitt states that the agent provides the Customer with “market information”. Summitt acknowledges that the Customer asks if she can have more time to think about enrolling and that the agent advised the Customer that if she does not call to cancel within the 10 days that Summitt will enroll her in the program.

Summitt argues that “in a high pressure sale Terasen’s notification letter and the 10 day cancellation period would not have been mentioned and the customer would not have been encouraged to do more research into the Program before committing to the program.”

#### **4.0 ROLE OF THE AGENT**

The Code of Conduct, which came into effect July 1, 2007, requires a TPV to each customer before the customer may be enrolled in the Customer Choice system for processing. The purpose of the TPV is to ensure that the customer entering into the contract with a Gas Marketer understands the consequences of their action (ref. Order No. G-73-07). Summitt states that “the CSR notified the customer of her cancellation rights before it became a TPV requirement (after July 1, 2007). The Commission acknowledges that this incident occurred prior to a TPV being a requirement.

The Code of Conduct refers to certain behaviours and requirements of a salesperson that must be followed when the salesperson is in the sales process with the customer (Articles 9, 15, 16). The Scope of the Code of Conduct states, in part, “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.” The Basic Principles of the Code of Conduct states, in part, “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.”

#### **5.0 CODE OF CONDUCT, SCOPE, BASIC PRINCIPLES, AND ARTICLES 9, 15, 16 AND 29**

Scope states, in part:

“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 Marketing of Gas to Low Volume Consumers participating in the Commodity Unbundling Service in the Province of British Columbia.

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 states, in part:

“Gas Marketers shall voluntarily assume responsibility towards the Consumer with respect to fair sales methods and product value, and shall make every reasonable effort to ensure Consumer satisfaction.”

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.”

## 6.0 COMMISSION DETERMINATION

Summitt argues that “[t]here is no indication during the TPV call that the customer was unduly pressured or harassed into enrolling in our program”. Summitt describes a scenario which is, in Summitt’s view a “high pressure sale”. The Commission agrees that the scenario described would certainly be a high pressure sale and could be cause for significant action on the part of the Commission. The Commission acknowledges that what might be an appropriate sales approach to one customer might not be viewed as appropriate for another. While the Code of Conduct states specific behaviours and information that must or must not be a part of a sales call or other interaction with the customer, not all circumstances can be anticipated. The Code of Conduct deals with this eventuality by stating in the Scope “[t]he 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.” The Basic Principles of the Code of Conduct also requires that Gas Marketers “shall voluntarily assume responsibility towards the Consumer with respect to fair sales methods and product value, and shall make every reasonable effort to ensure Consumer satisfaction.”

The Code of Conduct makes reference to “Salesperson” throughout. In keeping with both the application of the Scope of the Code of Conduct, and the definition of “salesperson” in the Code of Conduct, it is the view of the Commission that this term should be interpreted in a broad rather than narrow context. The term “salesperson” must refer to any employee or agent of a Gas Marketer who interacts with the customer at any point prior to the expiry of the contract cancellation provision and has an opportunity to influence the decision making of the customer on the merits to them of entering into, maintaining or cancelling a natural gas contract. Any agent or representative of the Gas Marketer engaging in a TPV, before or after such a call was a requirement under the Code of Conduct, must therefore adhere to all relevant requirements of the Code of Conduct where reference is made to Salesperson.

The Commission is not persuaded by Summitt’s defence of the TPV call. The Commission is of the view that the agent saw his role as not being anything other than to “save the sale.” He cleverly accepted the Customer’s wish to have more time to consider the offer and contrary to the Customer’s stated desire to cancel the contract, left the onus on the customer to contact Summitt to take this action.

In this matter, the Customer asked in a straight forward manner to cancel the contract. The merits of that request were immediately challenged by the agent. The agent also provided information, some of which, although perhaps factual, related to another market and another time period which is, in the view of the Commission confusing at best and misleading at worst. At the end of the call the Customer is undecided on whether she should enter into a contract and asked the agent for more time, which the agent agreed to but left it up to the customer to cancel the contract within the cancellation period. Although the exact time left in the cancellation period is not stated, it could not have been more than a couple of days.

The Commission is of the view, in this situation, that the agent did not respect the direct instruction of the Customer to cancel the contract, exerted undue pressure on the Customer and made statements which, directly or by implication, omission, ambiguity or exaggeration, were likely to mislead the Customer with respect to the prospect of saving money by entering into the contract.

**The Commission determines that in this matter, Summitt is in violation of the Scope of the Code of Conduct, certain Basic Principles of the Code of Conduct, and Articles 9, 15 and 16 of the Code of Conduct.**

## **7.0 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.”

This situation occurred prior to the TPV process being a requirement under the Code of Conduct and so the content requirements of Article 31 of the Code of Conduct do not apply.

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

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

Summitt must, within 14 days of this decision, review this Decision and the Code of Conduct with all agents engaged in TPV calls in the British Columbia market and each agent is to certify to the Commission that this requirement has been met and that they understand the Code of Conduct.