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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-49-08

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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. By letter dated February 13, 2008, the Commission requested from Summitt Energy BC L.P. (“Summitt”), valid copies of contracts and Third Party Verification (“TPV”) recordings for six recent enrollments in the Customer Choice Program, as a random compliance review; and
- B. On February 15, 2008, Summitt provided to the Commission the requested information, noting that a TPV for one enrollment was not applicable, and that one enrollment did not have a TPV conducted as of that date; and
- C. The Commission reviewed the information provided by Summitt and provided by letter dated February 21, 2008 the findings of the Commission’s compliance review and identified possible violations of the Code of Conduct for Gas Marketers (“Code of Conduct”). The Commission initiated a written hearing into the matter and offered an opportunity for Summitt to provide further comment and clarification of the issues; and
- D. By letter dated March 5, 2008, Summitt provided details of each enrollment and acknowledged that the interpretation of the term “enrollment” had not been properly made on the part of Summitt; and
- E. The Commission finds that Summitt has violated Articles 29, and 31 of the Code of Conduct, and further, that Summitt is not in compliance with Commission Order No. G-73-07.

**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 the breach of Article 31 of the Code of Conduct, and \$5,000.00 for the breach of Article 29 of the Code of Conduct, for a total penalty pursuant to this Order of \$6,000.00, as outlined in the Reasons for Decision, attached as Appendix A to this Order.
2. On the matter of compliance with Commission Order No. G-73-07, the Commission will not decide on an appropriate penalty at this time. Summitt is directed to review its records and identify all active and

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-49-08

2

cancelled customer accounts for contracts written between July 1, 2007 and March 5, 2008 where enrollment was processed prior to the TPV call being made. Summitt will file a report with the Commission within 30 days of the date of this Order, detailing how the file review was carried out, the number of files reviewed and the file or Account numbers where the enrollment was processed prior to the TPV call being made. In the report, should customer records be identified which meet the above criteria, Summitt may comment on any appropriate remedy or action by the Commission. When the Commission reviews the report a further determination will be made.

**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.  
Breach of the Code of Conduct for Gas Marketers

**REASONS FOR DECISION**

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**1.0 BACKGROUND**

By letter dated February 13, 2008 the British Columbia Utilities Commission (“Commission”) requested Summitt Energy BC L.P., (“Summitt”) to provide valid copies of contracts and Third Party Verification (“TPV”) recordings for six customers who had recently been enrolled with Summitt in the Customer Choice Program.

By email dated February 15, 2008 the Commission received from Summitt six copies of contracts and TPV recordings relating to four of the six contracts. The Commission reviewed the February 15, 2008 submission by Summitt and by letter dated February 21, 2008, the Commission advised Summitt of the following:

- Account 1584907 was signed prior to July 1, 2007, and therefore, a TPV has not been provided. A signed copy of the contract has been provided.
- A copy of the signed contract and TPV recording have been provided for Accounts 1562697 and 894906; however, the Commission notes that the TPV recording with the customer may not conform to the required script as outlined in Commission Order No. G-73-07, Appendix A, which sets specific required information that must be canvassed with the customer during the TPV.
- When reviewing the TPV recordings for Accounts 694065 and 1237239, the Commission noted that the customer in each case requested not to be enrolled in the Customer Choice Program, and therefore the TPV did not continue. The customer of Account 1237239 also noted that he had more than one agreement with Summitt Energy and requested that all agreements with Summitt Energy be cancelled.
- Summitt Energy has advised that a TPV could not be provided, as requested, for Account 638663, as it had not been reaffirmed as of February 15, 2008.

The Commission also stated in its letter:

“Commission Order No. G-73-07 amended the Code of Conduct [“Code”], pursuant to Section 71(1) of the Utilities Commission Act, to include a provision that states, ‘Commencing July 1, 2007, [TPV] will be completed for each door-to-door sale to a residential consumer prior to submitting a request to Terasen Gas to enroll the consumer in the Program’. The Code has been amended to include Article 31 of Appendix B, relating to the TPV requirement.

More specifically, as detailed in the Commission Determination, Appendix A to Order No. G-73-07, Section 3 states that: ‘The Gas Marketer must provide 100% verification before the customer may be enrolled in the Customer Choice system for processing’.

The Scope, as outlined on page 1 of the Code, states that ‘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’.

In accordance with Article 29 of the Code, 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.

The Commission has initiated a written hearing into this matter and offers an opportunity for Summitt Energy to review the comments of the Commission and provide its response before February 28, 2008. Summitt Energy should include in its response, clarification of issues such as the sequence of events for each of the aforementioned Accounts. This would include, but not be limited to, identification of the date the customer signed the contract, the date the TPV was recorded, and the date that the customer's information was submitted to Terasen Gas for enrollment, as in some cases, based on the information provided, these details are unclear to the Commission."

## **2.0 SUMMITT REPLY**

Summitt replied to the Commission by letter dated March 5, 2008 ("Reply"). The Commission notes that the Reply did not conform to the Commission request for a reply by February 28, 2008 and no request to the Commission for an extension to the filing date was requested by Summitt.

In its Reply, Summitt assures the Commission that it has "operational processes in place to ensure that no customer receives (i.e. flows) its Customer Choice Program without having both a valid contract and a positive reaffirmation in the program (through TPV)". Summitt states that it "interpreted the enrollment date of the customer as meaning the customer is scheduled to flow on Summitt Energy's unbundled program".

Summitt states in reference to Account No. 1562697 "The contract was signed on September 25, 2007, the customer positively TPV'd the contract on September 26, 2007, the customer was enrolled on September 26, 2007, and the customer flowed on our program on December 1, 2007."

In reference to Account No. 694065, Summitt states "the customer signed the contract on February 2, 2008, the account was sent for enrollment on February 7, 2008, the customer declined the program on the TPV call on February 7, 2008, Summitt de-enrolled the customer on February 14, 2008 and the customer did not flow on our program".

The dates as supplied by Summitt for customer signing, enrollment and TPV for Account Numbers 894906, 1237239 and 638663 are summarized in the table below.

<b>Account Number</b>	<b>Contract Date</b>	<b>Enrollment Date</b>	<b>TPV Date</b>
894906	Feb 1, 2008	Feb 7, 2008	Feb 12, 2008
1237239	Feb 1, 2008	Feb 7, 2008	Feb 11, 2008
638663	Feb 1, 2008	Feb 7, 2008	Uncertain, but not reported to be before Feb 7, 2008

Summitt states that its customer service records indicate that none of the above customers have called in to-date complaining about the fixed price contract they signed.

Summitt states that it is now ensuring that all its customers have positively reaffirmed the program on the TPV call before submitting a request to Terasen Gas to enroll the customer in the program.

### 3.0 COMMISSION ORDER NO. G-73-07, CODE OF CONDUCT ARTICLE 29, AND ARTICLE 31

Commission Order No. G-73-07 states, in part:

**“3. TPV telephone calls are to be conducted by all Gas Marketers for each door to door sale to residential customers commencing July 1, 2007, and must be completed before enrollment of the customer is registered.**

The Gas Marketer must provide 100% verification before the customer may be enrolled in the Customer Choice system for processing. Those customers that cannot be verified will be dropped. It is the Commission’s view that the highest probability of contacting a customer is within the first 10 days after signing a contract.

Any level of verification calls of less than 100% would be difficult to monitor. 100 percent verification provides assurance that customers entering into a contract with a Gas Marketer understand the consequences of their action. This provision then places less stress on the Terasen Gas enrollment system and complaints should be diminished before they reach the Terasen Gas call centre or the Commission.” (Order No. G-73-07, Appendix A, p. 6)

Article 29 states, in part:

“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.”

Article 31 states:

“Third Party Verification 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 initially dialed by the sales agent to the Gas Marketer with the customer then interacting with the Gas Marketer. The scripting will cover the topics specified by the Commission for this purpose, and be available to the Commission for review and approval. The digital file will be available to the Commission 3 days after the initial recording and retained by the Gas Marketer for the term of the contract.”

### 4.0 COMMISSION DETERMINATION

This hearing centers on the requirements of a Gas Marketer to carry out a TPV call which covers the topics specified by the Commission, before a customer is enrolled in the Customer Choice program and, the primary responsibility of the Gas Marketer to observe and comply with the Code of Conduct.

In the Commission’s letter to Summitt dated February 21, 2008, the Commission noted that for Accounts 1562697 and 894906 the TPV recording with the customer may not conform to the required script as outlined in Commission Order No. G-73-07, Appendix A, which sets specific required information that must be canvassed with the customer during the TPV. Summitt did not respond to this matter. **The Commission determines that with respect to Account No. 894906, Summitt did not properly and completely canvas major topics with the customer as stated in Commission Order No. G-73-07, and as required by Article 31 of the Code of Conduct, and is therefore, not in compliance with Article 31 of the Code of Conduct.**

On the matter of the requirement to complete the verification call before the customer may be enrolled in the Customer Choice system for processing, Summitt in its letter of March 5, 2008, states that it “interpreted the enrollment date of the customer as meaning the customer is scheduled to flow on Summitt Energy’s unbundled program”.

The Reasons for Decision which form Appendix A to Order No. G-73-07 makes reference to the term ‘enrollment’ and states “before the customer may be *enrolled* in the Customer Choice system for processing”(emphasis added) and “places less stress on the Terasen Gas *enrollment* system”(emphasis added) (Commission Order No G-73-07, Appendix A, p. 6).

The Commission notes that Summitt participated in the development of the Code of Conduct as it relates to requirements for TPV calls. The Reasons for Decision forming part of Commission Order G-73-07 which establishes the requirements for TPV calls notes on page 4, the input provided by the Director, Compliance and Regulatory Affairs for Summitt:

“The *enrollment* with Terasen Gas should take place as soon as the contract is signed however if the TPV is not completed within the 10 day cooling off period then the customer should be dropped. The Customer contract would then be invalid.” (emphasis added)

In this instance, Summitt uses the term “enrollment” as it is used in the context of the Customer Choice program and the term is used by the same Company official in both this instance and the March 5, 2008 letter. The Commission does not accept the excuse offered in Summitt’s letter of March 5, 2008 that Summitt interpreted the enrollment date of the customer as meaning the customer is scheduled to flow on Summitt Energy’s unbundled program”. Article 29 states that “the primary responsibility for observance of the Code of Conduct rests with the Gas Marketer”. In this situation, the Commission is of the view that Summitt, by interpreting the term “enrollment” as it has stated, and in these circumstances, when it has used the term at other times in an appropriate way, has not demonstrated acceptance of primary responsibility for observance of the Code of Conduct as required in Article 29. **The Commission determines that Summitt is not in compliance with Article 29 of the Code of Conduct in this instance.**

The timeline provided by Summitt in its letter of March 5, 2008 for Accounts 694065, 894906, 1237239 and 638663 shows that these customers were enrolled prior to the TPV calls being made. **The Commission determines that Summitt is in violation of Commission Order No. G-73-07 in these instances.**

## **5.0 RULES FOR GAS MARKETERS**

Rules for Gas Marketers section 10.0 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.”

The Commission has found that Summitt is not in compliance with Article 31 and Article 29 of the Code of Conduct. The Commission is particularly concerned with the Article 29 violation and in consideration of Summitt’s participation in the hearing, which established the TPV requirements, considers Summitt’s interpretation of the term “enrollment” to be convenient in the circumstances.

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.

The Commission applies a penalty of \$1,000 against Summitt for the breach of Article 31, and a penalty of \$5,000 for the breach of Article 29 of the Code of Conduct.

On the matter of compliance with Commission Order No. G-73-07, the Commission will not decide on an appropriate penalty at this time. **Summitt is directed to review its records and identify all active and cancelled customer accounts for contracts written between July 1, 2007 and March 5, 2008 where enrollment was processed prior to the TPV call being made. Summitt will file a report with the Commission within 30 days of the date of this Order, detailing how the file review was carried out, the number of files reviewed and the file or Account numbers where the enrollment was processed prior to the TPV call being made. In the report, should customer records be identified which meet the above criteria, Summitt may comment on any appropriate remedy or action by the Commission.** When the Commission reviews the report a further determination will be made.