



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-63-08

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

Direct Energy Marketing Limited  
Breach of the Code of Conduct for Gas Marketers

**BEFORE:** L.F. Kelsey, Commissioner April 1, 2008

**O R D E R**

**WHEREAS:**

- A. By email dated February 7, 2008, the Commission received a customer complaint against Direct Energy Marketing Limited ("Direct Energy"); and
- B. The Commission reviewed the complaint and by letter dated February 11, 2008, requested that Direct Energy also review the complaint and provide the Commission and the customer with a response; and
- C. On February 25, 2008 by email, Direct Energy wrote to the Commission and advised that the Salesperson in the customer complaint could not be identified, and proceeded to outline how, prior to working on behalf of Direct Energy, Salespersons must past rigorous training and certification, and that Direct Energy values complaints from its customers and that the alleged behaviour at this customer's door, which is the subject of the complaint, is unacceptable; and
- D. By letter dated March 4, 2008, the Commission advised Direct Energy that the Commission is of the view that Direct Energy may not be in compliance with the Code of Conduct for Gas Marketers ("Code of Conduct") and initiated a written hearing into the matter. The Commission directed Direct Energy to explain to the Commission how it fulfills its responsibilities under Article 29 of the Code of Conduct, in addition to any other information it may wish to provide; and
- E. By email dated March 14, 2008, Direct Energy advised the Commission that it was able to identify the Salesperson as the subject of the customer's complaint, and a detailed report has been placed in the Salesperson's file; and
- F. By letter dated March 14, 2008, Direct Energy advised the Commission of how it is able to comply with Article 29 of the Code of Conduct; and
- G. The Commission finds that Direct Energy has violated Articles 9, 15 and 29 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:

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-63-08

2

1. Within 30 calendar days of the date of this Order, Direct Energy will pay to the Commission a financial penalty of \$1,000.00 for the breach of Articles 9 and 15 the Code of Conduct, and a financial penalty of \$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 set out in the Reasons for Decision attached as Appendix A.
2. Direct Energy will, within 14 days of the date of this Order, submit a plan whereby it will achieve close monitoring by Direct Energy of independent Salesperson activity.
3. Direct Energy will, within 14 days of the date of this Order, provide Code of Conduct re-training to all Salespersons in British Columbia and have all Salespersons certify to the Commission that they have been instructed in and fully understand the Code of Conduct. Any Salesperson 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 Salespersons 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 Salesperson 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 1<sup>st</sup> day of April 2008.

BY ORDER

*Original signed by*

L.F. Kelsey  
Commissioner

Attachment

**Direct Energy Marketing Limited  
Breach of the Code of Conduct for Gas Marketers**

**REASONS FOR DECISION**

---

**1.0 BACKGROUND**

By email dated February 7, 2008, Wayne Christians submitted a customer complaint to the Commission on behalf of Ms. Eva Long (“Customer”). The Customer advised the Commission that a representative from Direct Energy visited her home on February 5, 2008 at 5:30 p.m. and stated that he was contacting people in the area on behalf of Terasen Gas. The Customer contacted her nephew (Mr. Christians) to find that the Salesperson was not in fact a representative of Terasen Gas. The Customer advised in her letter that she is a senior citizen and she is concerned with the Salesperson’s misrepresentation.

The Commission, by letter dated February 11, 2008, brought the matter to the attention of Direct Energy Marketing Limited (“Direct Energy”) and requested that Direct Energy review the Customer’s complaint and provide the Commission and the Customer with a response before February 25, 2008. On February 25, 2008, Direct Energy, by email from Mandy Ng, advised the Commission that upon receipt of the Customer’s complaint, Direct Energy took immediate action to investigate the matter with its sales distributor, Cydcor. Direct Energy advised that since the Customer did not provide any Salesperson’s I.D. or names, Direct Energy was not able to identify the Salesperson who was at her home.

Upon receipt of Direct Energy’s February 25<sup>th</sup> response, the Commission wrote to Direct Energy on March 4, 2008 and advised Direct Energy that the Commission had initiated a written hearing into the matter. The Commission noted it was of the view that Direct Energy may not be in compliance with the Code of Conduct for Gas Marketers (“Code of Conduct”) and that Direct Energy should, in its response, in addition to any other information that it may wish to provide, explain how it fulfills its responsibilities under Article 29 when it has no direct control over the performance of its Salespersons and no knowledge of the specific calls made by those Salespersons.

**2.0 DIRECT ENERGY REPLY**

By email dated March 14, 2008, Direct Energy provided its comments (“Reply”). In the Reply, Direct Energy advised the Commission that there was an error in communication when the Commission was initially informed that the Salesperson could not be identified, and that the Salesperson had now been identified. Direct Energy noted that in accordance with its reprimand process, a detailed report has been placed in the Salesperson’s file. Direct Energy also advised that it values all complaints from customer and handles them in a serious manner. Direct Energy states that it is committed to ensuring Salespersons operate with integrity by reinforcing this value through training and certification as well as periodic quality appraisals. Direct Energy also provided its apologies for any inconveniences that this matter has caused the customer and their family.

Direct Energy also provided by letter dated March 14, 2008, its comments on how it is able to comply with Article 29 of the Code of Conduct. In its Reply, Direct Energy noted that its recent correspondence to the Commission indicating an inability to identify Salespersons involved in specific customer interactions was not due to a lack of awareness or control of Salespersons. Direct Energy stated that this perceived inability was caused by a communication gap between the Sales Support team and the Compliance staff who correspond with the Commission. Direct Energy, in its Reply, stated that the identity of the Salesperson who visited the

Customer's home had been determined by its Vendor Management and communicated to Sales Support staff on February 22, 2008. Direct Energy stated that, "Unfortunately, this information was not shared with Compliance staff and therefore not included in the response sent to the BCUC on February 25, 2008."

Direct Energy has also stated in its Reply that it has re-emphasized to its staff the importance of thoroughly investigating each complaint and appropriately communicating the findings to ensure first-time resolution.

### **3.0 CODE OF CONDUCT ARTICLES 9, 15 AND 29**

The Commission notes that this incident occurred at a time when the Code of Conduct as attached as Appendix B to Commission Order No. G-73-07 was in effect; therefore, the following excerpts have been taken from the Code of Conduct in place at the time of this incident. The most recent Code of Conduct has been revised and attached as Appendix B to Commission Order No. G-44-08.

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 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, Direct Energy addresses a number of recent customer complaints, which have resulted in Direct Energy’s inability to identify the Salespersons in question. Direct Energy has indicated that this issue has been addressed with staff to ensure more efficient handling of customer complaints. The Commission emphasizes the importance of a thorough investigation by Direct Energy when a customer complaint is initiated. This ensures that the customer’s concerns are addressed, and also ensures that if necessary, remedial action is taken. In cases where a Salesperson cannot be identified, the Salesperson is not properly reprimanded. Direct Energy must ensure that Salespersons can be identified and it must foster a sense of responsibility to ensure that violations of the Code of Conduct are addressed and remedied. In addition, it would seem from Direct Energy’s response, that it only chose to advise the Commission of the Salesperson’s identity when a written hearing was initiated, and at that time did not state whether or not the incident occurred, but that remedial action was taken accordingly. The Commission considers this lack of accountability on the part of Direct Energy to be a violation of Article 29 of the Code of Conduct.

In reviewing the evidence submitted by the Customer and by Direct Energy, 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 Salesperson as described by the Customer is violation of Articles 9 and 15 of the Code of Conduct.

**The Commission determines that in this matter there are multiple violations of the Code of Conduct, specifically Articles 9, 15 and 29.**

#### 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 Direct Energy's statements in its email of February 25<sup>th</sup> and correspondence of March 14, 2008. Direct Energy does not take a position on whether the incident occurred or not but does state to have placed a report in the Salesperson's file. The Commission notes however, that Direct Energy could not take this remedial action when the Commission originally requested that Direct Energy review the Customer's complaint, and had the matter not been pursued further, remedial action may not have been taken at any time. In Direct Energy's correspondence dated March 14, 2008 it advised that in the case of Ms. Long, the identity of the Salesperson was originally determined by its Vendor Manager and communicated to Sales Support staff on February 22, 2008. Direct Energy also stated that this information was not shared with its Compliance staff and therefore not included in the response to the Commission on February 25, 2008.

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 Direct Energy for the breaches of Articles 9 and 15 of the Code of Conduct, and a penalty of \$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.

Direct Energy will, within 14 days of the date of this Order, submit a plan whereby it will achieve close monitoring by Direct Energy of independent representative activity.

Direct Energy must, within 14 days of this Decision, provide Code of Conduct retraining to all its Salespersons in British Columbia and have all Salespersons certify to the Commission that they have been instructed in and fully understand the Code of Conduct. Any Salesperson 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 Salespersons 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 Salesperson 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.