

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER A-11-11**

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

and

FortisBC Energy Inc.
Customer Choice Program
Revisions to Rules for Gas Marketers and
Form A: Application for a Licence to Market Natural Gas

BEFORE:

L.F. Kelsey, Commissioner
C. Brown, Commissioner
N. MacMurchy, Commissioner
D. Morton, Commissioner

July 21, 2011

O R D E R

WHEREAS:

- A. In 2003, pursuant to Policy Action No. 19, the Utilities Commission Act was amended to empower the Commission under section 71 to make rules as well as licence terms and conditions that a gas marketing company must comply with. The Commission established Rules for Gas Marketers and a Code of Conduct, both of which have been modified from time to time as a result of program enhancements;
- B. In 2006 Terasen Gas Inc. (TGI) applied for approval of a Certificate of Public Convenience and Necessity (CPCN) for the Commodity Unbundling Project for Residential Customers (Project) pursuant to Section 45 of the *Utilities Commission Act*, to implement effective November 1, 2007, unbundling for residential customers in its service territory (excluding Fort Nelson and Revelstoke);
- C. British Columbia Utilities Commission (Commission) Order C-6-06 granted a CPCN to TGI for the Project effective November 1, 2007;
- D. Commission Order G-90-03 approved the Rules for Gas Marketers (Rules) and the Application for a Licence to Market Natural Gas (Application), attached as Form A to the Rules;
- E. Commission Orders G-44-08, G-114-08 and A-6-09 approved revisions to the Rules;
- F. Modifications are required to the Rules for Gas Marketers, Application and the Licence Requirements.

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NOW THEREFORE pursuant to section 71.1 of the *Utilities Commission Act*, the Commission orders as follows:

1. Effective immediately, a revised Application with modifications to the Rules for Gas Marketers and Licence Requirements is in effect.
 - The revised Rules for Gas Marketers are attached as Appendix A to this Order;
 - The revised Licence Requirements and Application Instructions are attached as Appendix B to this Order;
 - Required Terms for Gas Marketer's proof of security are attached as Appendix C to this Order. These Terms must conform to the wording in Appendix C. A copy of all terms and conditions must be submitted along with the proof of security.
2. The original proof of security document must be filed with the Application.
3. Incomplete Applications will not be processed by the Commission.
4. Applications must be complete on or before the filing deadline; otherwise they may not be processed prior to the expiration of the Gas Marketer's current Gas Marketer Licence.

DATED at the City of Vancouver, in the Province of British Columbia, this 25th day of July 2011.

BY ORDER

Original signed by:

D. Morton
Commissioner

Attachment

BRITISH COLUMBIA UTILITIES COMMISSION

Rules for Gas Marketers

Section 71.1(1) of the *Utilities Commission Act (Act)* requires a person who is not a public utility and who performs a gas marketing activity for low-volume consumers to hold a Gas Marketer License issued by the Commission. The following Rules for Gas Marketers (Rules) have been developed pursuant to subsection 71.1(10) to assist the administration of Gas Marketer licensing.

1.0 LOW-VOLUME CONSUMER

A “low-volume consumer” means a person who, for the applicable period, either:

- a. has, or is expected to have, a normalized annual consumption at one premise of less than 2,000 gigajoules of gas per year; or
- b. has chosen the unbundled commodity service option, whatever the person’s annual consumption of gas.

2.0 APPLICATION FOR A GAS MARKETER LICENCE

Application for a Gas Marketer Licence must be made using Form A: Application for a Licence to Market Natural Gas, and must be submitted to the Commission at least 60 days prior to the date that the licence is required together with a cheque in the amount of \$1,000 made payable to the Ministry of Finance. The term of a Gas Marketer Licence will be specified in the licence and will be for a November through October gas contract year or such other period as the Commission may determine.

Applications for a licence renewal will follow the procedure for a new licence, and must be submitted to the Commission at least 60 days prior to the expiry date of the Gas Marketer’s current licence. The Application for renewal must identify the Gas Marketer’s current level of complaints, disputes, and cancellations. If the Gas Marketer is currently experiencing a level of complaints, disputes and cancellations that is significantly high, the Application for renewal must address the reason for the high level and the actions that the Gas Marketer has taken or will implement to remedy the problem.

3.0 AGENT FOR SERVICE

If the Licensee does not have a registered office or other place of business in British Columbia, the Licensee must file with the Commission the name of a person who is to act as the Licensee’s Agent for Service in British Columbia and upon whom service of process, notices or other documentation may be made. The Licensee’s Agent for Service in British Columbia must be either an individual who is a resident of British Columbia and is at least 18 years old, or a corporation that has its head office or registered office in British Columbia.

4.0 STANDARD FORM OF GAS SUPPLY CONTRACT

The standard form of gas supply contract between the Gas Marketer and the public utility is subject to Commission approval. Section 71 of the Act requires that a copy of the gas supply contract between a Gas Marketer and a public utility must be filed with the Commission. Gas Marketers must incorporate, in their contracts with gas suppliers, appropriate clauses to ensure adequate security of supply.

5.0 AGREEMENTS WITH CUSTOMERS

Gas Marketers must use a form of Notice of Appointment of Marketer that has been approved by the Commission to set out the arrangements between the consumer, the Gas Marketer and the public utility.

Gas Marketers also must include in their natural gas supply contract documents with consumers the requirements related to term, price and disclosure of other information as set out in the Rules, the Code of Conduct for Gas Marketers, the Code of Conduct and Transfer Pricing Policy for Provision of Utility Resources and Services, and tariff schedules for unbundled commodity service.

The Customer's form for signature, in accompaniment with the Notice of Appointment of Marketer, will be clearly designated as an "Agreement" or a "Contract".

6.0 STANDARD INFORMATION BOOKLET

Each public utility that has an approved gas unbundled commodity service tariff must, in cooperation with Gas Marketers, develop a standard information booklet for its service area which outlines the procedures for commodity purchase and discloses potential benefits and risks. A Gas Marketer must distribute the standard information booklet prepared by the public utility to all prospective clients (and include a reference to the booklet in their Notice of Appointment of Marketer). The public utility will make the booklet available in both hard copy and electronic form.

7.0 LIMITATION ON DIRECT SALES

Except for conventional utility gas sales under its approved tariff, a public utility must not sell natural gas other than through a non-regulated subsidiary which is subject to the Rules. A public utility is required to demonstrate to the satisfaction of the Commission a complete operational separation from any such subsidiary. The relationship between the public utility and its non-regulated subsidiary is subject to the utility's Code of Conduct and Transfer Pricing Policy for Provision of Utility Resources and Services.

8.0 CODE OF CONDUCT

All Gas Marketers must comply with the Rules and the Code of Conduct for Gas Marketers approved by the Commission and as may be amended by the Commission from time to time. Gas Marketers in violation of the Rules or the Code of Conduct may be subject to penalties and licence suspension or cancellation. Gas Marketers will reference the Code of Conduct for Gas Marketers and its availability to customers in their Notice of Appointment of Marketer and make a copy available to the customer.

9.0 PERFORMANCE SECURITY

In order to receive a Gas Marketer Licence an applicant must provide proof of performance security in the amount of \$250,000 (or such other amount as the Commission may determine) and file with the Commission proof of that security. The performance security must be in the form of a bond, letter of credit or other security acceptable to the Commission, be payable to the Minister of Finance and must permit the Minister of Finance to draw upon the security in whole or in part at the discretion of the Commission in the event of a Commission finding pursuant to subsection 71.1(8) of the Act.

10.0 INFORMATION REPORTING REQUIREMENTS

In order to maintain compliance with licence requirements, the following information must be provided as it becomes available:

- a. Unaudited quarterly financial statements;
- b. The most recent version of those documents that the Gas Marketer provided to demonstrate that it continues to satisfy the Section 7, Financial Qualifications, under Licence Requirements;
- c. The most recent version of the documents submitted under Sections (8), (9), (10), (11) and (12) of the Licence Requirements.

11.0 ENFORCEMENT OF RULES AND CODE OF CONDUCT AND LICENCE CONDITIONS

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 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.

12.0 Failure by a Gas Marketer to comply with its gas delivery obligations as outlined in the gas supply agreement between the Gas Marketer and the public utility may result in the suspension or revocation of the Gas Marketer Licence.



Application for a Licence to Market Natural Gas

Licence Requirements and Application Instructions

Licence Requirements

To apply to obtain or renew a Licence as a Natural Gas Marketer, **all of the following items must be submitted:**

1. A completed Application for a Licence to Market Natural Gas (Form A), at least 60 days prior to the requested effective date of the licence sought;
2. A \$1,000 Application Fee made payable to the Minister of Finance;
3. Copies of all licences to carry on business in B.C.;
4. Proof of security in the amount of CAD \$250,000. Proof of security may be provided by way of a bond, irrevocable letter of credit or security for CAD \$250,000 acceptable to the Commission.
 - a. The proof of security must include within it or be accompanied by all terms and conditions. The terms and conditions must contain the Required Terms in the wording provided by the Commission and attached as Appendix C to this Order;
 - b. This provision will be waived in the event that security (bond or irrevocable letter of credit) is provided as specified below in (7c) provided that the Required Terms as described in (4a) above are included in the terms and conditions of the instrument provided;
5. A copy of the Annual Report for the most recently ended fiscal year filed with the Registrar of Companies in B.C. or a copy of the last Registration Certificate filed in B.C.;
6. Financial Statements:
 - a. Provide a copy of the audited financial statements for the most recently ended financial year;
 - b. If the applicant does not have audited financial statements for itself, the applicant may submit the audited financial statements of its parent company, as well as a parental guarantee acceptable to the Commission. In addition, the parent must meet one of the conditions (7a), (7b), (7d) or (7e) below;
 - c. Provide copies of all subsequent unaudited quarterly statements for each concluded financial quarter following the most recently ended fiscal year;
 - d. Applicants may request that the Commission hold these financial statements confidential.



7. Proof that the applicant possesses sufficient financial resources to be able to serve its customer base, any one of the following criteria will satisfy this condition:
 - a. Maintain a short-term credit rating of at least: A-2 from Standard & Poor's, P-2 from Moody's Investors Service, or R-2 from DBRS;
 - b. Maintain a long-term credit rating of at least: BBB- from Standard & Poor's, Baa3 from Moody's Investors Service, or BBB from DBRS;
 - c. Provide a parental guarantee, payment bond, or irrevocable letter of credit in the amount that is the greater of \$500,000 or 5% of the applicant's gross revenue based on the most recently ended financial year, valid for a period of not less than the term of the license sought;
 - d. Maintain a line of credit or revolving credit agreement in the amount that is the greater of \$500,000 or 5% of the applicant's gross revenue based on the most recently ended financial year, valid for a period of not less than the term of the licence sought;
 - e. Provide confirmation that it meets or exceeds, based on the most recently ended financial year, the following ratios (i) Pre-Tax Interest Coverage – 3.4x; (ii) Funds from Operations Interest Coverage – 3.8x; (iii) Funds from Operations to Total Debt – 28%; and (iv) Total Debt to Total Capitalization – 54%.
8. All training plans, procedures, and manuals, including door-to-door sales and customer service scripts that are being used and are planned to be used by the applicant and its employees to market and sell natural gas;
9. All marketing materials that are being used and/or are planned to be used by the applicant and its employees in the sale of natural gas via door-to-door marketing, direct mailing, print advertisement, and mail-outs (including electronic means) as a result of telemarketing and internet marketing;
10. Copies of all customer gas supply Agreements/Contracts and Notice of Appointment for all rate classifications including all corresponding terms, conditions, and schedules;
11. All procedure documentation for handling disputes and complaints received by the applicant, FortisBC or the Commission;
12. The process documentation for handling Agent conduct related disputes and complaints, including the disciplinary action taken by the applicant to ensure compliance with the Code of Conduct;
13. Customer statistics (applicable to application for licence renewal):
 - a. Cumulative total number of enrolled customers;
 - b. Total number of customers that were enrolled, per month, in the last 12 months, separated by new, positively renewed, and evergreen renewed customers;



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- c. Total number of customers, per month, who were enrolled in the last 12 months and cancelled within their 10 day cancellation period;
 - d. Total number of customers, per month, whose contracts were cancelled after the 10 day cancellation period, including anniversary drops or early terminations outside of anniversary dates categorized as new, positively renewed, and evergreen renewed;
 - e. Total number of disputes for adjudication, per month, that were logged in GEM in the last 12 months;
 - f. Total number of 'cancellation requests' (courtesy drops), per month, that were logged in GEM in the last 12 months including the main reasons for the requests;
 - g. Total number of Operational Correction Drops, per month, that were submitted through GEM in the last 12 months and the reason for each drop request;
 - h. Total number of complaints, per month, that were received in writing in the last 12 months;
 - i. Outline the most common reasons for the disputes and complaints and identify what actions have been or will be taken to remedy the root cause of the issue.
13. Information on the applicant's gas supply arrangements with its suppliers. Applicants must confirm that they have the gas contract capability to meet the existing and future commitments to its customers by outlining its operating structure on how it secures and hedges its gas supply;
14. Such other information that the Commission may require.

Instructions:

Incomplete applications will not be processed by the Commission and will be returned to the Applicant. If the proof of security will not accompany the application, Applicants must ensure that the proof of security is received by the Commission at least two weeks prior to the requested effective date of the licence sought. Type or print clearly all information in black ink. Please send the completed application to:

British Columbia Utilities Commission
Sixth Floor, 900 Howe St.
Vancouver, BC., V6Z 2N3

Attention: Tatiana Obrejanu
Manager, Gas Marketing Programs

Email: Customer.Choice@bcuc.com
Facsimile: 604-660-1102

Application for a Licence to Market Natural Gas

A. General Information

1. Name of Business (Name to appear on Licence)			
2. If there has been a change of name, show all previous names			
3. Primary Contact for this Licence (British Columbia Contact)			
Mr.	<input type="checkbox"/>	Last Name:	Full First name:
Mrs.	<input type="checkbox"/>		Initial:
Ms.	<input type="checkbox"/>	Position Held:	
Other	<input type="checkbox"/>		
Contact Address			
City		Postal	
Phone Number	Fax Number	E-mail Address	

4. Type and period of Licence Applied for	
Initial Licence to Market Natural Gas	<input type="checkbox"/>
Renewal Licence to Market Natural Gas	<input type="checkbox"/>
Requested Licence Term	
Type of Service: <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial & Residential	
5. Business Classification	
Sole Proprietor	<input type="checkbox"/>
Partnership	<input type="checkbox"/>
Corporation	<input type="checkbox"/>
Other (describe): _____.	<input type="checkbox"/>

B. Information about the Applicant Organization

1. Applicant Organization (Corporation, Partnership, Sole Proprietorship, Other)			
Full Legal Name of Organization		Date of Formation	
Business Address			
City	Province.	Country	Postal/ZIP
Phone Number	Fax Number		E-mail Address

2. Licensing History			
Has your organization or an affiliate of your organization ever been granted a licence to market gas in British Columbia?	Yes <input type="checkbox"/> No <input type="checkbox"/>		
If your response is yes to the above, please provide the following information:			
Licence Type	Licence No.		
Please provide a summary with reasons and results of any investigation for any situations where gas has not flowed as required in the Gas Marketer's gas supply contracts with local distribution companies for corresponding direct sale to customers.			
Please provide character references from local distribution companies who are familiar with the activities of the Gas Marketer.			
If your organization has ever marketed or sold electricity or natural gas in any other jurisdiction? If so, please provide the following information:			
Organization	Jurisdiction	Licence Type	Licence/Registration No.

3. Please provide the requested details of all legal proceedings as attachments to this Application.

	Yes	No
<p>Has your organization ever made a proposal to its creditors under the Bankruptcy and Insolvency Act, been declared bankrupt or is it presently party to bankruptcy or receivership proceedings?</p> <p style="margin-left: 40px;">1. Where your organization is an undischarged bankrupt, provide a copy of the Assignment in Bankruptcy and a list of creditors</p> <p style="margin-left: 40px;">2. Where your organization is a discharged bankrupt, provide full proof of discharge</p> <p style="margin-left: 40px;">3. Where your organization has submitted a proposal to creditors or is in receivership provide a copy of the proposal or receivership order together with a list of creditors.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Are there any unpaid judgments against your organization? If yes, provide a copy of each judgment. State amount outstanding and repayment arrangements.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Has your organization ever been found guilty or convicted of an offence under any law, Regulation or Act or are any charges now pending? This includes where a conditional discharge or an absolute discharge has been ordered. If yes, provide particulars in a separate, signed and dated statement.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Has your organization ever had a licence or registration of any kind refused, suspended, revoked or cancelled? If yes, attach particulars</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Has your organization ever been subject of a regulatory investigation or proceeding? If yes, attach particulars.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Has your organization ever been reprimanded, fined or otherwise disciplined by a regulatory/licensing body? If yes, attach particulars.</p>	<input type="checkbox"/>	<input type="checkbox"/>

C. Information About Each Key Individual

Attach a copy of this sheet for each Sole Proprietor, Partner, Officer and Director

1. Personal Information			
Mr. <input type="checkbox"/>	Last Name:	Full First name:	Initial:
Mrs. <input type="checkbox"/>			
Ms. <input type="checkbox"/>	Position Held:		
Other <input type="checkbox"/>			
Contact Address			
City		Prov.	Country
			Postal/ZIP
Phone Number	Fax Number	Birthdate mm/dd/yy	

2. Personal Experience in Energy Industry

	Yes	No
Has this person been a proprietor, partner, officer, director of an organization that was granted a licence to market natural gas in British Columbia? If yes, provide licence number.	<input type="checkbox"/>	<input type="checkbox"/>
Has this person been a proprietor, partner, officer, or director of an organization that marketed or sold electricity or natural gas other than for a regulated distribution utility in any other jurisdiction? If yes, please provide company name, jurisdiction, or location and licence or registration type, identifier and date issued.	<input type="checkbox"/>	<input type="checkbox"/>
Has this person been a proprietor, partner, officer, or director of an organization that had a registration or licence of any kind refused, suspended, revoked or cancelled? If yes, provide particulars.	<input type="checkbox"/>	<input type="checkbox"/>

3. Legal Proceedings

Is this person now or has this person been involved in personal bankruptcy proceedings. If yes, attach Assignment or Discharge papers.	<input type="checkbox"/>	<input type="checkbox"/>
Is this person now or has this person been an officer, director, or majority shareholder of a corporation which has been declared bankrupt has made a proposal to its creditors under the Bankruptcy and Insolvency Act, or is in receivership, or is presently party to bankruptcy proceedings? 1. Where this person is an undischarged bankrupt, provide a copy of the Assignment in Bankruptcy and a list of creditors 2. Where this person is a discharged bankrupt, provide full proof of discharge 3. For corporate bankruptcies, proposals or receiverships provide related documents.	<input type="checkbox"/>	<input type="checkbox"/>
Are there any unpaid judgments against this person? If yes, submit a copy of each judgment. State amount outstanding and repayment arrangements.	<input type="checkbox"/>	<input type="checkbox"/>
Has this person ever been fined, reprimanded, disciplined or otherwise subject to penalties or been investigated by a regulatory body or government agency arising out activities relating to the marketing of gas or electricity? If yes, attach full particulars on a separate, signed and dated statement.	<input type="checkbox"/>	<input type="checkbox"/>
Has this person ever been found guilty or convicted of an offense under any law or are any charges now pending? This includes where a conditional discharge or an absolute discharge has been ordered. If yes, attach full particulars on a separate, signed and dated statement.	<input type="checkbox"/>	<input type="checkbox"/>

D. Confirmation and Understanding

As evidenced by signing this Application, you understand that the Commission may deny, suspend or revoke a licence, or fine or otherwise discipline a licence holder, for reasons it considers sufficient, and that the following may constitute sufficient cause:

1. Misrepresentations in this Application.
2. Failure to carry out undertakings set out in this Application.
3. Failure to comply with the Code of Conduct for Gas Marketers, any applicable legislation, the Rules for Gas Marketers or conditions in the Gas Marketer Licence.
4. Failure to maintain a satisfactory performance bond.
5. Past performance in B.C. or other jurisdictions in respect to Items 1 to 4 above may be sufficient cause for denial of licence.

By signing this application, you confirm and warrant the following:

1. Your sales people/agent will provide all customers, at time of the sale, with a standard information booklet and a copy of the Notice of Appointment of Marketer agreement and any other contract signed by that customer.
2. You have read the Rules for Gas Marketers pursuant to Section 71.1 of the Utilities Commission Act and the Code of Conduct for Gas Marketers, and accept the obligations set out therein.
3. The Licensee shall notify the Commission of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee as soon as practicable, but in any event no more than (20) calendar days past the date upon which such change occurs.

By signing this Application, and to verify the information provided on this form, you authorize the Commission to collect additional information from some or all of the following sources: federal, provincial/state and municipal governments; licensing bodies; law enforcement agencies; sheriffs' offices; credit bureaus; professional and industry associations; and former and current employers. In order to determine whether your organization can reasonably be expected to be financially responsible in the conduct of business, a credit review (in accordance with standard business practices) may be undertaken by the Commission. **Only information relevant to your application will be collected.**

The Applicant certifies that the foregoing information and materials accompanying this Application are correct.

Note: The proprietor or at least one partner, officer or director of the organization must sign this Application. In addition, each individual who has provided information in Section "C" must sign this Application.

Print Name and Title	Signature of Applicant	Date Signed

Required Terms – Proof of Security

Beneficiary:
Minister of Finance
Province of British Columbia
c/o British Columbia Utilities Commission
Box 250, 900 Howe Street
Vancouver, BC
Canada V6Z 2N3

“This ***Letter of Credit/Bond*** is available for payment to the Minister of Finance upon ***Financial Institution***'s receipt of a dated and signed demand statement. The demand statement from the British Columbia Utilities Commission addressed to ***Financial Institutions*** will request withdrawals from the ***Letter of Credit/Bond*** to be payable to the Minister of Finance and will state as follows:

‘We the undersigned British Columbia Utilities Commission hereby demand payment of the sum of Canadian Dollars (Amount in words and figures to be inserted) under ***Letter of Credit/Bond No. ___*** and confirm that monies drawn will be retained and used by us at our discretion to meet obligations as may be determined by us pursuant to British Columbia *Utilities Commission Act* Section 71.1(8).’

Partial drawing and multiple presentations are permitted hereunder and any amounts payable under this ***Letter of Credit/Bond*** will be made payable to the Minister of Finance, Province of British Columbia.

This ***Letter of Credit/Bond*** shall be reduced automatically by the amount of each drawing paid hereunder, or by amendment, or by amount of reduction that may be authorized by the beneficiary from time to time by its written request given to ***Financial Institution.***

We hereby agree with you to honour each drawing drawn under and in compliance with the terms and conditions of this ***Letter of Credit/Bond*** if presented, together with the documents specified at ***Financial Institution*** on or before expiry date of ***expiry date*.”**