



ORDER NUMBER
A-2-17

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
Customer Choice Program Annual General Meeting

BEFORE:

D.A. Cote, Panel Chair/Commissioner

on May 26, 2017

ORDER

WHEREAS:

- A. FortisBC Energy Inc. (FEI) obtained a Certificate of Public Convenience and Necessity (CPCN) on August 14, 2006 for the Commodity Unbundling Project for Residential Customers (Customer Choice) in accordance with the government's 2002 energy policy which allows for the direct sale of natural gas to residential and small volume commercial customers through gas marketing companies licensed by the British Columbia Utilities Commission (Commission);
- B. Article 34 of the Code of Conduct for Gas Marketers allows the Commission to hold an Annual General Meeting (AGM) to discuss program improvements or enhancements, if warranted;
- C. FEI submitted Customer Choice program statistics regarding the 2016 calendar year to the Commission and AGM stakeholders for review on February 28, 2017;
- D. By letter dated April 13, 2017, the Commission issued Customer Choice program statistics regarding disputes and complaints filed in 2016 to FEI and other AGM stakeholders for review and requested submissions on whether an AGM regarding the 2016 calendar year is warranted, and if so, proposed issues to be addressed during the AGM;
- E. By April 27, 2017, FEI, Bluestream Energy Inc., Direct Energy Marketing Limited, Just Energy (B.C.) Limited Partnership and the BC Old Age Pensioners' Organization *et al.* made submissions on the matter;
- F. The Commission issued a revised version of the Customer Choice program statistics regarding disputes and complaints filed in 2016, correcting two minor clerical errors, to FEI and other AGM stakeholders by letter dated May 24, 2017; and
- G. The Commission has reviewed the submissions and determines an AGM regarding the 2016 calendar year is not warranted.

NOW THEREFORE the Commission orders a Customer Choice program Annual General Meeting regarding the 2016 calendar year will not be established for the reasons outlined in the attached Reasons for Decision.

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of May 2017.

BY ORDER

Original signed by:

D.A. Cote
Panel Chair/Commissioner

Attachment

FortisBC Energy Inc.
Customer Choice Program Annual General Meeting

REASONS FOR DECISION

1.0 BACKGROUND

On June 21, 2012, by Order A-10-12¹, the Commission established the following regulatory process for the Customer Choice Program Annual General Meeting (AGM):

- Fortis Energy Inc. (FEI) releases program statistics annually;
- Commission staff canvass stakeholders about program issues to be addressed, if any, at the AGM; and
- The Commission determines whether an AGM proceeding is warranted for the year.

In accordance with this Order, FEI submitted program statistics for the 2016 calendar year to the Commission on February 28, 2017. By letter dated April 13, 2017,² the Commission issued FEI's program statistics and the Commission's dispute and complaint statistics to stakeholders. This letter also requested submissions from the parties on whether an AGM for 2016 calendar year is warranted and if so, an outline of proposed issues to be addressed during the AGM.

2.0 SUBMISSIONS

2.1 Issues for discussion

FEI, Bluestream Energy Inc. (Bluestream Energy), Direct Energy Marketing Limited (Direct Energy), Just Energy (BC) Limited Partnership (Just Energy) and BC Old Age Pensioners' Organization et al. (BCOAPO) made submissions on the need for an AGM. FEI, Bluestream Energy and Direct Energy all agreed that given the scope of the issues covered in the recently completed Customer Choice Program Cost Recovery review process an AGM was not warranted this year. Just Energy and BCOAPO favoured having an AGM and proposed issues for discussion if established. Their proposed issues for discussion are outlined below.

Voice contracting

Just Energy submits the following: "Just Energy would like the BCUC to consider allowing voice contracting for new agreements. It is an alternative avenue through which a consumer can participate in the Customer Choice Program. We have suggestions as to the consumer protection provisions that can be built around this voice contracting process."³

Under the current Code of Conduct for Gas Marketers, gas marketers are able to renew customers via voice contract; however, gas marketers may not use voice contracting for new agreements. The Commission considered the proposal to introduce voice contracting for new agreements during the 2010 Customer Choice

¹ British Columbia Utilities Commission 2012 Customer Choice Annual General Meeting Process - Code of Conduct Revisions Rate Schedule 4 Customers, Order A-10-12.

² Exhibit A-2.

³ Just Energy Submission, p.1.

AGM. Following that AGM, the Commission provided the following direction: “if gas marketers wish to pursue this item they must collectively submit a formal application for the Commission as it is appropriate to hold a separate procedural review, including an opportunity for public participation.”⁴

By letters dated March 27, 2015, Access Gas, Direct Energy and Just Energy raised the issue of voice contracting for new agreements for discussion during the 2014 Customer Choice Seventh AGM.⁵ By Order A-3-15, the Commission found there is no reason to vary the direction provided in 2010 to proceed by way of formal application and therefore did not include the item on the Issues List for the Customer Choice AGM.

Panel discussion

The Commission has previously determined that if gas marketers wish to pursue voice contracting for new agreements a formal application must be submitted affording an opportunity for public participation. Given the direction provided by the 2010 Decision and the lack of reasons provided to vary that determination the Panel finds it is inappropriate to deal with this issue as part of an AGM proceeding. If one or more gas marketers would like to pursue voice contracting for new agreements they are encouraged to do so by formal application.

Customer disputes and complaints

By letter dated April 27, 2017, BCOAPO proposes an update on customer complaints be provided at an AGM, if established. BCOAPO states, “FEI has provided statistical information on the number and type of customer complaints received in 2016. However, no information is provided with respect to the reasons the complaints were made or what can be done to address outstanding issues that result in customer complaints continuing to be made.” BCOAPO submits there is value in exploring whether further changes are needed to the Code of Conduct for Gas Marketers to address any ongoing issues.⁶

As noted, the Commission has provided the FEI 2016 Customer Choice Annual Program Statistics as well as the Commission’s dispute and complaint statistics for the 2016 calendar year to stakeholders. Section 4 of the FEI 2016 Customer Choice Annual Program Statistics report outlines: the number of cancellation disputes and standard disputes filed each year between 2007 and 2016; the number of standard disputes ruled in favour of the gas marketer and in favour of the customer; and the number of cancellation disputes and standard disputes filed each month in 2016. Section 4 includes the following information regarding disputes:

- 18% of standard disputes filed in 2016 concerned contracts signed on Vancouver Island, where the Customer Choice program became available for the first time in 2015;
- When the disputes raised are calculated as a percentage of sales, total disputes filed have remained steady at 2 percent of gross enrolments for the past three years; and
- Commission rulings in favour of the customer were 35 percent of standard disputes raised, making 2016 the first year where rulings in favour of the customer have been less than 40 percent.⁷

In its April 13, 2017 letter,⁸ the Commission also provided an overview of standard disputes and complaints filed with the Commission in 2016. The Commission submitted a revised version of the overview, correcting two

⁴ FortisBC Energy Inc. Customer Choice – 2010 Program Summary and Recommendations, Order A-9-11, Reasons for Decision, p. 22.

⁵ FortisBC Energy Inc. 2014 Customer Choice Seventh Annual General Meeting, Exhibits C1-2, C2-2 and C3-2.

⁶ BCOAPO Final Submission.

⁷ Exhibit A-2, FortisBC Energy Inc. 2016 Customer Choice Program Statistics, Section 4. p.9.

⁸ Exhibit A-2.

minor clerical errors, by letter dated May 24, 2017.⁹ The Commission's overview supplements the FEI 2016 Customer Choice Annual Program Statistics by providing more detail on standard disputes, including:

- the number of standard disputes resolved directly between the gas marketer and the customer, adjudicated in favour of the gas marketer and adjudicated in favour of the customer;
- the number standard disputes filed by residential customers and commercial customers between 2012 and 2016; and
- the number of standard disputes by year contract signed.

The overview also provides the reason customers filed standard disputes. The most common reason for dispute was related to the marketing tactics of the salesperson, with 44 of the 67 disputes filed on this basis. Of these 44 disputes, 29 were filed on the basis of alleged misrepresentation by the salesperson of the contract rate; 11 were filed on the basis of alleged misrepresentation of the gas marketer's identity; and 4 were filed on the basis of alleged misrepresentation of the contract term. The overview goes on to provide the dispute outcome (contract upheld or cancelled) and whether that outcome was the result of direct resolution between the gas marketer and customer or adjudication by the Commission, for each dispute reason category. Of the 44 disputes filed on the basis of marketing tactics, 75 percent of the contracts were upheld and 25 percent of the contracts were cancelled.¹⁰

Regarding complaints, the overview provides primary reason for complaint and complaint outcomes by reason for complaint.¹¹

The Code of Conduct for Gas Marketers underwent extensive review during the 2014 Customer Choice Seventh AGM. Participants in the proceeding included FEI, licensed gas marketers and BCOAPO. Following the AGM, the Commission approved a revised Ninth Version of the Code of Conduct for Gas Marketers by Order A-12-15.¹² The nature of disputes and complaints filed were taken into consideration in identifying revisions to the Code of Conduct for Gas Marketers.

Panel discussion

The Panel notes that the information provided by the Commission in its letter of April 13, 2017,¹³ provides the parties with a great deal of information regarding disputes and complaints resolution as well as the reasons they were filed. Based on the information provided, the level of disputes, at two percent of gross enrollments, is relatively low and has been steady over the past few years. While the Panel considers a review of complaints and disputes to be an issue worthy of discussion at an AGM I am unpersuaded the evidence regarding disputes and complaints raises serious concerns pointing to an urgent need to review the Code of Conduct for Gas Marketers.

Dispute fee amount

BCOAPO submits the amount of the fee charged to gas marketers where a standard dispute is ruled on in favour of the customer (the "dispute fee") could also be discussed at an AGM.¹⁴ In proposing this issue, BCOAPO references the Commission's reasons for decision accompanying Order A-9-19, which concluded the FEI

⁹ Exhibit A-3.

¹⁰ Exhibit A-2, pp. 8-9.

¹¹ Ibid., pp. 14-17.

¹² FortisBC Energy Inc. Customer Choice Program Seventh Annual General Meeting, Order A-12-15.

¹³ Exhibit A-2.

¹⁴ BCOAPO Submission, p.2.

Customer Choice Program Cost Recovery proceeding. BCOAPO notes FEI submitted evidence during that proceeding that between 2012 and 2014 the three year rolling average cost to adjudicate a standard dispute was \$221.¹⁵

The Commission has determined dispute resolution costs are a gas marketer cost and on this basis allocated the portion of the Commission's program costs for dispute resolution to gas marketers.¹⁶ In accordance with this, the Commission's program fee recovery structure, detailed in the decision, allows for the recovery of dispute resolution costs from gas marketers.

On November 17, 2016, FEI filed the Customer Choice Program Cost Recovery Compliance Filing to Order A-9-16. In this filing, FEI proposed to maintain the \$50 standard dispute fee, based on the following rationale:

...it incents gas marketers to operate in accordance with the Code of Conduct for Gas Marketers, with the expectation it will serve to limit the number of disputes and encourage the parties to resolve the issue before going to arbitration. FEI asserts that while elimination of the fee is an option, doing so would provide less incentive for marketers to resolve customer issues prior to a dispute being raised. It would also potentially penalize gas marketers with fewer disputes in favour of gas marketers with a larger number of disputes and cause the total cost of adjudication to increase.¹⁷

The Commission approved the maintenance of the \$50 standard dispute fee by Order A-1-17 and accompanying reasons. The Commission noted that FEI indicated it is amenable to an alternate amount but ruled the matter of changing the dispute fee was not adequately canvassed in the proceeding as the gas marketers were not afforded the opportunity to offer comment. The Commission approved the proposal to leave the dispute fee at \$50 and noted it is open to a recommendation for future change to the dispute fee amounts if any of the parties wish to raise this issue at a future Annual General Meeting.¹⁸

Panel discussion

The Panel notes that dispute resolution costs are recovered directly from gas marketers and the imposition of a dispute fee is in addition to the recovery of these costs. Further, where a dispute is adjudicated in favour of a customer there are additional potential financial impacts to the gas marketer as such rulings often require the gas marketer to refund any differences between the contracted rate and FEI's rate back to the contract flow date. The financial impact of this is potentially significant, far in excess of the dispute fee and in the Panel's view, sufficiently discourages a gas marketer from breaching the Code of Conduct for Gas Marketers. Therefore, I do not consider there to be an urgent need to deal with this matter at this time.

However, as noted in the reasons attached to Order A-1-17, the Commission is amenable to a recommendation for future change to the dispute fee amount. While it was expected that this issue is one that would be best raised at a future AGM it does not mean that it could not be dealt with another process in the event an AGM were not held. If BCOAPO wishes to pursue the matter at this time the Panel will initiate a written process. In the alternative the matter can be dealt with at a future AGM.

¹⁵ Ibid.

¹⁶ FortisBC Energy Inc. 2016 Customer Choice Program Cost Recovery Application, Reasons for Decision, Section 3.3.6, p. 23.

¹⁷ FortisBC Energy Inc. 2016 Customer Choice Program Cost Recovery Compliance Filing to Order A-9-16, Order A-1-17, Reasons for Decision, p. 11.

¹⁸ Ibid., p. 13.

2.2 Panel determination on the Need for an AGM

The Panel determines an AGM regarding the 2016 calendar year is not warranted. As noted in the preceding discussion, the issues proposed for discussion are either not urgent or can be addressed through other means. The cost to hold an AGM is not inconsequential and the Panel believes holding one at this time is unnecessary and would represent an inefficient use of regulatory process.