



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER A-14-14**

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC 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

Planet Energy (B.C.) Corp.
Application for Renewal of its Gas Marketer Licence
under the Customer Choice Program

BEFORE: L.F. Kelsey, Commissioner
H.G. Harowitz, Commissioner
N.E. MacMurchy, Commissioner October 30, 2014
B.A. Magnan, Commissioner
C. van Wermeskerken, Commissioner

O R D E R

WHEREAS:

- A. On August 5, 2014, Planet Energy (B.C.) Corp. (Planet Energy), applied to the British Columbia Utilities Commission (Commission) for renewal of its gas marketer licence for the period November 1, 2014 to October 31, 2015 (Application);
- B. The Application included the payment of the \$1,000 application fee and a \$250,000 proof of security, pursuant to Sections 2 and 4 respectively of the Licence Requirements;
- C. Planet Energy requests that the Commission hold the financial information included in the Application confidential on the basis that Planet Energy is a privately held company;
- D. The Application did not include certain materials, pursuant to Sections 8 and 9 of the Licence Requirements;
- E. Commission staff and Planet Energy corresponded regarding the Application materials and requirements on September 24, 2014, October 1, 2014, October 3, 2014, October 8, 2014, October 14, 2014, October 15, 2014 and October 16, 2014;
- F. By letter dated October 17, 2014, Commission staff advised Planet Energy that the Application may not comply with Licence Requirements 8 and 9 unless Planet Energy submitted materials pursuant to those sections of the Licence Requirements by October 21, 2014;

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- G. Planet Energy responded on October 20, 2014, by letter dated October 21, 2014; and
- H. The Commission reviewed Planet Energy's Application and relying upon the information and representations made by Planet Energy finds that renewal of its gas marketer licence, subject to certain conditions, including a prohibition on marketing to new and existing customers and/or enrolling and renewing new and existing customers, is warranted.

NOW THEREFORE pursuant to section 71.1(6) of the *Utilities Commission Act*, and for the reasons outlined in the Reasons for Decision attached as Appendix A, the British Columbia Utilities Commission orders as follows:

1. A gas marketer licence is issued to Planet Energy (B.C.) Corp. for the period of November 1, 2014 to October 31, 2015.
2. The Commission will hold the financial information in Planet Energy's Application confidential, as requested by Planet Energy.
3. This licence is subject to the following conditions:
 - a. Planet Energy is prohibited from marketing to new and existing customers and/or enrolling and renewing new and existing customers under the Customer Choice program until such time as Planet Energy submits, and the Commission approves, the materials required under Sections 8 and 9 of the Licence Requirements.
 - b. Planet Energy must carry out the undertakings as provided in its application for a gas marketer licence and as set out in the Rules for Gas Marketers established by Order A-12-13.
 - c. Planet Energy must comply with the Code of Conduct for Gas Marketers and Rate Schedule 36 of FortisBC Energy Inc. Planet Energy shall ensure that its employees, salespersons or other representatives of its products and services comply with the standards required of a gas marketer as set out in the Code of Conduct for Gas Marketers and Planet Energy shall be responsible for any non-compliance of its employees, salespersons or other representatives of its products and services.
 - d. Planet Energy must maintain a \$250,000 performance security in full force and effect for the duration of the Licence.
 - e. Planet Energy must file with the Commission, pursuant to item 10.0 of the Rules for Gas Marketers, the following information:
 - i. The most recent version of the documents submitted to satisfy Section 7, Financial Qualifications, of the Licence Requirements; and

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- ii. The documents submitted or required under Sections (8), (9), (10), (11) and (12) of the Licence Requirements for the Commission's comment and approval, as necessary, prior to commercial distribution and/or use.
- f. The Commission may, at any time and without prior notice to Planet Energy, amend or impose new terms and conditions on, suspend, or cancel the gas marketer licence for reasons the Commission, in its sole discretion, considers sufficient.
- g. The gas marketer licence and all copies of it shall remain the property of the Commission. Planet Energy will return these documents forthwith upon written request from the Commission.

DATED at the City of Vancouver, in the Province of British Columbia, this 31st day of October 2014.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment

An Application by Planet Energy (B.C.) Corp.
for Renewal of its Gas Marketer Licence
under the Customer Choice Program

REASONS FOR DECISION

1. INTRODUCTION AND SUMMARY

On August 5, 2014, Planet Energy (B.C.) Corp. (Planet Energy), applied to the British Columbia Utilities Commission (Commission) for renewal of its gas marketer licence for the period November 1, 2014 to October 31, 2015 (Application). During the course of its review of the Application, the Commission identified several issues with the Application, outlined below, resulting in the Commission's decision to prohibit Planet Energy from marketing to new and existing customers and/or enrolling and renewing new and existing customers under the Customer Choice program.

2. PLANET ENERGY SALESPERSONS

The first issue identified in the Application is Planet Energy's position that they do not employ salespeople for new enrollments or contract renewals.

2.1 Planet Energy Submissions

2.1.1 ACN Independent Business Owners – New Enrollments

Planet Energy states: "Planet Energy does not have, train or employ any salespeople in B.C." (Planet Energy letter, October 16, 2014). Rather, Planet Energy claims that sales are conducted through ACN Independent Business Owners.

Planet Energy states:

... Planet does not engage in any door-to-door or other forms of direct salesperson-to-customer solicitation. To the contrary, since 2010 all Planet sales in B.C. have been conducted through ACN Canada.

ACN Canada is a relationship marketing company. ACN's independent business owners (IBOs) do not directly solicit customers to purchase specific products. Rather, ACN IBOs introduce family, friends and acquaintances to ACN's online product line and store where they may learn about and purchase a broad range of ACN products and services including digital phone, local long distance, wireless, television, home security and automation, internet, technical support and energy products and services. ACN's IBOs earn commissions when individuals they introduce to ACN become ACN members and make purchases through ACN's online store. Individuals who purchase products and services through ACN also receive rebates on products and services they purchase through ACN.

It should be noted that ACN IBOs simply introduce individuals to ACN's online product line and store, where they can learn about the range of available products and services and

decide, based on the online product information, whether to purchase any products or services. ACN IBOs are not, however, present or involved in individuals' product research or purchase decisions. These processes are undertaken by individuals on their own without any involvement by ACN IBOs. In this regard, any purchase of Planet products through ACN is for all intents and purposes the same as all other internet marketing – prospective customers learn about Planet's products online and make purchase decisions online without the presence or involvement of a salesperson. (Planet Energy letter, October 1, 2014).

2.1.2 Training Materials – New Enrollments

The Application includes a PowerPoint presentation titled "POWER YOUR WORLD... With PLANET ENERGY through CANADA ENERGY", which Planet Energy refers to as the Canadian Training Manual by letters dated October 1, 2014 and October 21, 2014. The following are excerpts from the Canadian Training Manual:

- Walk your customers through their options by visiting your ACN Direct Online Store and accessing the Canada Energy store (slide 1, page 6);
- FAQs
 - Will I be switching utilities?
No
 - Who do I receive my billing from?
From your current utility
 - When will this program start?
It may be upwards of 90 days
 - Do you need to install anything to benefit from your programs?
No (slide 4, page 12);
- Common Objections
 - 'Why should I sign up for Canada Energy? I prefer not to think about my energy bills and just pay the utility without any extra paper work or hassles.'
 - 'I haven't heard of this before and don't understand how this is possible.' (slide 1, page 13);
- Common Objections
 - 'I'm worried my prices will go up and I'll want to cancel.'
 - 'I don't want to end up paying more than I am with my current utility' (slide 2, page 13); and
- ACN IBOs should not position Planet Energy products as providing savings on the customer's bill (slide 4, page 13).

2.1.3 Planet Energy Staff– Contract Renewals

Planet Energy states that it "does not conduct renewals via any method other than its online enrollment portal" and Planet Energy "does not permit its staff to help and/or aid a consumer in renewing their agreement(s) via Planet Energy's online enrollment portal." (Planet Energy letter, October 21, 2014).

2.1.4 Marketing Materials – Contract Renewals

By letter dated October 1, 2014, Planet Energy submitted a letter regarding Renewal Options (the Renewal Letter) and provided the following description: “This letter prompts the customer to call Planet Energy and notifies the customer that Planet Energy will be contacting them shortly. Ultimately, Planet Energy directs the consumer towards its online enrollment portal.” (Planet Energy letter, October 1, 2014).

According to the Renewal Letter: “Planet Energy will soon be contacting you via telephone to review the terms and conditions of your agreement. However, in order to take advantage of Planet Energy’s offer quickly, please contact our Customer Service Department at 1-866-360-8569.” (Planet Energy letter, October 1, 2014, Appendix B).

2.2 Code of Conduct for Gas Marketers

The Code of Conduct for Gas Marketers established by Commission Order A-10-12 defines Salespersons, Marketing and Internet Marketing as outlined below:

- **Salesperson** means a person who is employed or otherwise conducts Marketing and/or Third Party Verification on behalf of a licensed Gas Marketer, or makes representations to Consumers on behalf of a Gas Marketer for the purpose of effecting sales of Gas to Low Volume Consumers. (Appendix A to Order A-10-12, p. 5).
- **Marketing** for the purpose of this Code, means any activities intended to solicit a Consumer or potential Consumer to contract with a Gas Marketer, including providing for a Consumer’s consideration an Offer, and is characterized by door-to-door selling, internet, telemarketing, direct mail selling activities, and any other means by which a Gas Marketer or its Salespersons interacts directly with a Consumer or potential Consumer. (Appendix A to Order A-10-12, p. 5).
- **Internet Marketing** means marketing of natural gas that uses the Internet, e-mail or mobile device without a Salesperson’s presence and/or involvement. (Appendix A to Order A-10-12, p. 5).

Commission Determination

In the Commission’s view, ACN Independent Business Owners and Planet Energy staff conduct marketing, on behalf of Planet Energy, and are therefore salespersons for Planet Energy, as both terms are defined by the Code of Conduct for Gas Marketers.

In the Commission’s view, ACN IBOs “introducing” family, friends and acquaintances to ACN’s online product line and store is an activity intended to solicit a Consumer or potential Consumer to contract with a Gas Marketer, as “Marketing” is defined in the Code of Conduct for Gas Marketers.

As well, Planet Energy’s Canadian Training Manual includes the following statements:

- Walk your customers through their options by visiting your ACN Direct Online Store and accessing the Canada Energy store;
- FAQs
 - Will I be switching utilities?
 - No

Who do I receive my billing from?

From your current utility

When will this program start?

It may be upwards of 90 days

Do you need to install anything to benefit from your programs?

No;

- Common Objections
 - ‘Why should I sign up for Canada Energy? I prefer not to think about my energy bills and just pay the utility without any extra paper work or hassles.’
 - ‘I haven’t heard of this before and don’t understand how this is possible.’;
- Common Objections
 - ‘I’m worried my prices will go up and I’ll want to cancel.’
 - ‘I don’t want to end up paying more than I am with my current utility.’; and
- ACN IBOs should not position Planet Energy products as providing savings on the customer’s bill.

These excerpts from the Canadian Training Manual further support the Commission’s finding that ACN IBOs conduct marketing. While Planet Energy states that “ACN’s independent business owners (IBOs) do not directly solicit customers to purchase specific products,” the Canadian Training Manual content appears to contradict this statement. If ACN IBOs are not selling Planet Energy products directly, it is unclear to the Commission why the Canadian Training Manual includes the following content: instruction to walk customers through options by visiting the Canada Energy store; FAQs regarding Planet Energy products; Common Objections to Planet Energy products; and instruction not to position Planet Energy products as providing savings.

Given that ACN IBOs conduct marketing on behalf of Planet Energy for the purpose of effecting sales of gas to low-volume consumers, ACN IBOs are salespersons for Planet Energy, as defined in the Code of Conduct for Gas Marketers.

While Planet Energy submits that “any purchase of Planet products through ACN is for all intents and purposes the same as all other internet marketing – prospective customers learn about Planet’s products online and make purchase decisions online without the presence or involvement of a salesperson”, the Commission notes ‘internet marketing’ means marketing of natural gas that uses the Internet, e-mail or mobile device without a salesperson’s presence and/or involvement. As ACN IBOs are involved in the marketing of the product as salespersons for Planet Energy, the marketing method employed by Planet Energy for new enrollments does not qualify as internet marketing, as defined in the Code of Conduct for Gas Marketers.

Regarding contract renewals, Planet Energy states that it:

- does not conduct renewals via any method other than its online enrollment portal; and
- does not permit its staff to help and/or aid a consumer in renewing their agreement(s) via Planet Energy’s online enrollment portal.

These statements are inconsistent with the contents of the Renewal Letter, which states: “Planet Energy will soon be contacting you via telephone to review the terms and conditions of your agreement. However, in order to take advantage of Planet Energy’s offer quickly, please contact our Customer Service Department at 1-866-360-8569.” In the Commission’s view, Planet Energy staff contacting or being contacted by customers regarding renewal constitutes Planet Energy staff conducting marketing on behalf of Planet Energy for the purpose of

effecting sales of gas to low-volume consumers and therefore acting as salespersons for Planet Energy, both as defined by the Code of Conduct for Gas Marketers.

3. TRAINING MATERIAL REQUIREMENTS

The second issue identified in the Application is that Planet Energy's training materials, as required under Section 8 of the Licence Requirements, are incomplete.

3.1 Planet Energy Submissions

Regarding the Canadian Training Manual, Planet Energy states:

... there is effectively no Training Manual for British Columbia, there is only an information presentation... This manual is used for ACN Independent Business Owners ['IBO'] only, as Planet Energy does not train any energy salespersons (agents) in British Columbia. Planet Energy, via its Ontario centric training manual, also provides generalized information on the British Columbia market, should an ACN IBO wish to further educate themselves on the British Columbia energy market. This could be used by an IBO in conjunction with ACN's website, Planet Energy's website, FortisBC's website, the BCUC website and others to get information pertaining to the British Columbia natural gas market... Planet Energy apologizes and requests that the information presentation only be viewed as a PowerPoint information presentation providing general market information, and not a training manual. Or in the alternative, if this is not acceptable, Planet Energy would submit that it does not have salespersons in British Columbia, and as such, no Training Manual to submit for review. (Planet Energy letter, October 14, 2014).

By letter dated October 21, 2014, Planet Energy submitted additional training materials to add to the Canadian Training Manual. The additional materials, titled "British Columbia When Renewing a Customer – Regulations", state:

- In British Columbia, should an IBO be discussing the renewal of a supply arrangement for natural gas services, the following must be strictly adhered to... (slide 2, page 1).
- When meeting with a customer in person for the renewal of a natural gas agreement is part of the conversation, an IBO must do the following... (slide 2, page 1).
- You can visit people when you like, however if you are going to discuss the renewal of a natural gas agreement with them... (slide 4, page 2).
- When discussing the renewal of a natural gas agreement... (slide 4, page 2).
- If a consumer re-chooses Planet Energy as their supplier, remember... (slide 5, page 3).

According to the Renewal Letter: "Planet Energy will soon be contacting you via telephone to review the terms and conditions of your agreement. However, in order to take advantage of Planet Energy's offer quickly, please contact our Customer Service Department at 1-866-360-8569." (Planet Energy letter, October 1, 2014, Appendix B).

3.2 Code of Conduct for Gas Marketers and Rules for Gas Marketers

According to Article 31 of the Code of Conduct for Gas Marketers: “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” (Appendix A to Order A-10-12, p. 18).

According to Attachment 1 to the Rules for Gas Marketers established by Commission Order A-12-13, the following materials must be included in a gas marketer’s licence application:

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 (Licence Requirement 8).

Commission Determination

The Commission finds Planet Energy’s Application is incomplete as it does not contain the following materials required under Licence Requirement 8:

- training plans;
- training procedures;
- training manuals; and
- customer service scripts.

As Planet Energy’s Application does not include the required training plans, procedures and manuals and customer service scripts, the Commission determines that Planet Energy shall be prohibited from marketing to new and existing customers and/or enrolling and renewing new and existing customers under the Customer Choice program, pending the submission, review and Commission approval of the materials required under Licence Requirement 8.

Given the Commission’s preceding determination that ACN Independent Business Owners and Planet Energy staff conduct marketing on behalf of Planet Energy, and are therefore salespersons for Planet Energy, the following materials are required: training plans, training procedures, training manual and customer service scripts.

The Application does not include any training plans, training procedures, or customer service scripts that satisfy Licence Requirement 8.

Regarding the requirement for a training manual, Planet Energy requests that the Canadian Training Manual “be viewed as a PowerPoint information presentation providing general market information, and not a training manual. Or in the alternative, if this is not acceptable, Planet Energy would submit that it does not have salespersons in British Columbia, and as such, no Training Manual to submit for review.”

The Commission accepts Planet Energy’s submission that it does not have a training manual.

The materials Planet Energy submitted to add to the Canadian Training Manual, titled “British Columbia When Renewing a Customer – Regulations” on October 21, 2014, appear to only apply to ACN IBOs conducting renewals.

The Commission is uncertain why Planet Energy would submit materials regarding ACN IBOs conducting renewals, as the only material regarding renewals included in the Application (the Renewal Letter), outlines the renewal process as being between Planet Energy and the customer, not ACN IBOs and the customer. On this basis, the Commission understands that ACN IBOs are not involved in renewing customers in BC. Therefore, the Commission finds the training materials submitted by letter dated October 21, 2014 are not relevant to the Application at this time.

4. MARKETING MATERIAL REQUIREMENTS

The third issue identified in the Application is that Planet Energy's marketing materials, as required under Section 9 of the Licence Requirements, are incomplete.

4.1 Planet Energy Submissions

Regarding the Renewal Letter submitted on October 1, 2014, Planet Energy states:

The letter submitted by Planet Energy is not by regulatory definition a renewal letter. The letter submitted by Planet Energy is instead a notification letter that Planet Energy sends consumers, which will inform them that Planet Energy will be contacting the consumer to review their renewal options with Planet Energy, as well as notify the customer that should they not take action of contacting Planet Energy for a renewal, that their natural gas supply services will be returned to FortisBC. As such, and since the letter submitted is not a renewal letter by regulatory definition, but instead a notification letter; Planet Energy is unable to state it contains the materials as outlined in Article 27, including, but not limited to a copy of the terms and conditions of the agreement. Should a customer renew their agreement with Planet Energy, they must do so via Planet Energy's online enrollment portal. After which, the consumer is provided with all documents as required by regulation. If this letter is cause for confusion, Planet Energy apologizes and requests that the letter submitted should be viewed only as a notification letter, not a renewal letter by regulatory definition. Or in the alternative, if this is not acceptable, Planet Energy would submit that it does not have a renewal letter pursuant to regulation. (Planet Energy letter, October 8, 2014).

Regarding its renewal process, Planet Energy states: Planet Energy "does not conduct renewals via any other method than its online enrollment portal. Should a customer renew their agreement with Planet Energy via Planet Energy's online enrollment portal, the consumer is provided with all documents as required by BCUC regulation." (Planet Energy letter, October 21, 2014).

4.2 Code of Conduct for Gas Marketers and Rules for Gas Marketers

According to Article 27 of the Code of Conduct for Gas Marketers: "The Gas Marketer shall give written notice in the form of a renewal package to the Consumer no less than 90 days prior to the applicable renewal date... The renewal package must include a new Consumer's Agreement which shall contain all essential terms of the Offer and complete terms and conditions." (Appendix A to Order A-10-12, p. 16).

According to Attachment 1 to the Rules for Gas Marketers established by Commission Order A-12-13, the following materials must be included in a gas marketer's licence application:

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 (Licence Requirement 9).

Commission Determination

The Application is incomplete as it does not contain a renewal package that is compliant with the requirements under Article 27 of the Code of Conduct for Gas Marketers in order to satisfy Licence Requirement 9. As Planet Energy's Application does not include a compliant renewal package, the Commission determines that Planet Energy shall be prohibited from marketing to and/or renewing existing customers under the Customer Choice program, pending the submission, review and Commission approval of the renewal package.



LICENCE No. A-14-14

GAS MARKETER LICENCE

PLANET ENERGY (B.C.) CORP.

is granted a licence for the purpose of providing advice to, or acting on behalf of, a low volume consumer⁽¹⁾ purchasing gas directly in the Province of British Columbia subject to the terms and conditions contained in Commission Order A-14-14, which are set out in the reverse of the Licence.

BRITISH COLUMBIA UTILITIES COMMISSION

Original signed by:

L.F. Kelsey, Commissioner

ISSUED: October 30, 2014
EFFECTIVE: November 1, 2014
EXPIRES: October 31, 2015

(1) As described in the Rules for Gas Marketers

This Gas Marketer Licence is subject to the following conditions:

- a. Planet Energy is prohibited from marketing to new and existing customers and/or enrolling and renewing new and existing customers under the Customer Choice program until such time as Planet Energy submits, and the Commission approves, the materials required under Sections 8 and 9 of the Licence Requirements.
- b. Planet Energy must carry out the undertakings as provided in its application for a gas marketer licence and as set out in the Rules for Gas Marketers established by Order A-12-13.
- c. Planet Energy must comply with the Code of Conduct for Gas Marketers and Rate Schedule 36 of FortisBC Energy Inc. Planet Energy shall ensure that its employees, salespersons or other representatives of its products and services comply with the standards required of a gas marketer as set out in the Code of Conduct for Gas Marketers and Planet Energy shall be responsible for any non-compliance of its employees, salespersons or other representatives of its products and services.
- d. Planet Energy must maintain a \$250,000 performance security in full force and effect for the duration of the Licence.
- e. Planet Energy must file with the Commission, pursuant to item 10.0 of the Rules for Gas Marketers, the following information:
 - i. The most recent version of the documents submitted to satisfy Section 7, Financial Qualifications, of the Licence Requirements; and
 - ii. The documents submitted or required under Sections (8), (9), (10), (11) and (12) of the Licence Requirements for the Commission's comment and approval, as necessary, prior to commercial distribution and/or use.
- f. The Commission may, at any time and without prior notice to Planet Energy, amend or impose new terms and conditions on, suspend, or cancel the gas marketer licence for reasons the Commission, in its sole discretion, considers sufficient.
- g. The gas marketer licence and all copies of it shall remain the property of the Commission. Planet Energy will return these documents forthwith upon written request from the Commission.