



IN THE MATTER OF
the Utilities Commission Act
S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF
a Review of the
BC Gas Utility Ltd.
Furnace Repair Plan

DECISION

September 17, 1993

BEFORE:

Lorna Barr, Deputy Chair
and Chair of the Division
Kenneth Hall, Commissioner
Katherine Wellman, Commissioner

TABLE OF CONTENTS

Page No.

EXECUTIVE SUMMARY

| | | |
|------------|---|-----------|
| 1.0 | INTRODUCTION | 1 |
| 1.1 | The 1990 BC Gas Furnace Repair Plan Application | 1 |
| 1.2 | British Columbia Utilities Commission Order No. G-47-91 | 2 |
| 1.3 | The Sands Inquiry | 3 |
| 1.4 | The International Brotherhood of Electrical Workers Request for Reconsideration of Order No. G-95-92 | 3 |
| 1.5 | The Scope of the Reconsideration | 4 |
| 2.0 | THE SANDS INQUIRY | 6 |
| 2.1 | Methodology | 6 |
| 2.2 | Findings | 7 |
| 3.0 | PUBLIC INTEREST | 9 |
| 3.1 | BC Gas Utility Limited | 9 |
| 3.2 | Plan Subscribers | 9 |
| 3.3 | Contractor Community | 11 |
| 3.4 | Commission Conclusions | 12 |
| 4.0 | SAFETY ISSUES | 13 |
| 4.1 | Safety and Commission Orders | 13 |
| 4.2 | BCGUL Views on Safety | 14 |
| 4.3 | Gas Contractors and Safety | 15 |
| 4.4 | Commission Conclusions | 15 |
| 5.0 | MONOPOLY AND FAIR COMPETITION | 17 |
| 5.1 | Program Experiences | 20 |
| 5.2 | Commission Conclusions | 21 |
| 6.0 | FINANCIAL IMPACT | 23 |
| 6.1 | Commission Requirements | 23 |
| 6.2 | BCGUL FRP Annual Report | 23 |
| 6.3 | Subsequent Financial Analyses | 24 |
| 6.4 | Commission Conclusions | 25 |
| 7.0 | COMMISSION DETERMINATIONS | 27 |

COMMISSION ORDER NO. G-82-93

APPENDIX A

Appearances

APPENDIX B

List of Exhibits

APPENDIX C

Commission Order No. G-47-91

APPENDIX D

Commission Order No. G-95-92

EXECUTIVE SUMMARY

BACKGROUND

On October 23, 1990, BC Gas Inc., now BC Gas Utility Ltd. ("BCGUL"), applied to the British Columbia Utilities Commission ("the Commission") for approval to introduce a furnace repair insurance plan ("the FRP") at a cost of \$59 for its Lower Mainland residential customers. The plan covered parts and labour for specified gas furnace repairs, but did not include safety inspections or annual maintenance.

On June 14, 1991 the Commission approved the FRP with certain directions (Order No. G-47-91, see Appendix C).

On March 31, 1992, BCGUL filed its 1991 Annual Report on the performance and profitability of the FRP. After examining the Annual Report the Commission decided that further evidence and a review of the plan was required. Ms. Elsie Sands was appointed as an Inquiry Officer to conduct a review of the Plan in accordance with specified Terms of Reference.

On September 8, 1992, the Inquiry Report with Recommendations was filed with the Commission. Based on findings made in the course of the Inquiry, the Commission decided to accept the Inquiry Report Recommendations. BCGUL was directed to wind-up the FRP. Following this direction, the IBEW requested that the Commission reconsider this Decision. The Reconsideration Application was denied, after which the IBEW sought Leave to Appeal in the B.C. Court of Appeal. The Court granted Leave to Appeal. Further requests were made to the Commission for a reconsideration of its Decision. As a result, the Commission concluded that a public review of the Plan and the Inquiry Report should take place.

COMMISSION DETERMINATIONS

In reviewing the FRP and the Inquiry Report, the Commission has focused on the level of compliance with Order No. G-47-91 and the accompanying Reasons for Decision. On the basis of the evidence presented, the Commission makes the following determinations:

1. Independent customer surveys and other evidence presented during the hearing demonstrated that customers are interested in protecting themselves against unexpected furnace repair expenses through the purchase of insurance. In the Reasons for Decision attached to the 1991 Order, the Commission considered that such plans are a matter of improved quality of service and customer convenience rather than a critical service. The Commission is still of this view.

2. In the same Reasons for Decision the Commission expressed the belief that safety and insurance considerations need not necessarily be linked in the same program. The Commission reiterates that safety is a primary concern and periodic inspections of gas appliances are desirable to ensure safe and efficient performance.
3. The Commission finds that BCGUL has not complied with the directions in the 1991 Reasons for Decision in that there was to be a full allocation of overheads to the FRP and stand-alone accounting. The Commission also recognizes that there is some duplication in service between the FRP and BCGUL's emergency service program and that the costs are not being allocated appropriately. FRP losses incurred will result in a cross-subsidization from utility rates if the Commission allows the losses to be recovered in revenue requirements.
4. The Commission finds that BCGUL did comply with the direction in the 1991 Reasons for Decision to include the Association telephone number in promotional material on the FRP. However, not all of the promotional material was submitted to the Commission as required.
5. The Commission finds that all gas customers are not adequately informed about BCGUL's emergency services. The Commission directs BCGUL to provide information about its Safety and Diagnostic Services to all of its customers.
6. The Commission finds that there is interest in a furnace parts insurance plan and that it is in the interest of the consumer to have such an option available. However, the Commission finds that the BCGUL Plan has not adequately met many of the directions in the 1991 Reasons for Decision approving the plan. For these reasons the Commission finds that it is not in the public interest to approve reinstatement of the FRP.

1.0 INTRODUCTION

1.1 The 1990 BC Gas Furnace Repair Plan Application

On October 23, 1990, BC Gas Inc., now BC Gas Utility Ltd. ("BCGUL") (Exhibit #15), applied to the British Columbia Utilities Commission ("the Commission") for approval to introduce a furnace repair insurance plan ("the FRP") for its Lower Mainland residential customers. The plan covered parts and labour for specified gas furnace repairs, but did not include safety inspections or annual maintenance (Exhibits #3, 10).

Prior to the Application, discussions had taken place between representatives of BCGUL and a number of contractor organizations representing private gas contractors regarding the proposed plan. The contractor organizations indicated that they opposed any plan that did not include regular inspection and maintenance because of safety concerns. In particular, they were concerned that a furnace repair plan without an inspection maintenance component, would result in a false sense of security among subscribers to the plan. They also indicated concern that residential gas customers might be less willing to request and pay for regular inspections and routine maintenance if they were members of the FRP. The contractor organizations also had concerns about BCGUL itself operating a repair plan in a competitive market comprised of many small businesses. The contractor organizations were concerned that BCGUL would take advantage of its monopoly distribution position and use other areas of its business to cross-subsidize its repair insurance plan.

BCGUL did not share the concerns of the contractor organizations and did not consider maintenance and inspection to be necessary components of a furnace repair insurance plan. BCGUL conducted a market survey which concluded that the additional cost associated with the inclusion of a maintenance and inspection component would not result in a capture rate of customers sufficient to make the FRP financially viable. Further, BCGUL felt that it could identify costs with sufficient accuracy to prevent cross-subsidization. Most important, from BCGUL's point of view, the market survey indicated that there was some public interest for a repair insurance plan. Many of the survey customers who indicated a desire for insurance also indicated a preference for the purchase of insurance from BCGUL. BCGUL felt that it could most efficiently deliver the repair insurance service by making more effective use of existing labour and equipment.

On October 30, 1990, the Commission held a meeting with representatives from the Mechanical Contractors Association of British Columbia, the Heating Refrigeration and Air Conditioning Institute, the Refrigeration and Air Conditioning Contractors Association, the Sheet Metal Contractors

Association of British Columbia and the Canadian Institute of Plumbing and Heating to discuss their concerns about the FRP.

On December 6, 1990, in response to a Commission staff information request (Exhibit #13), BCGUL proposed a number of amendments to their Application. At this stage of review, the Commission believed further actions were required. In order to provide the contractor organizations an opportunity to develop a competing plan, the Commission placed the BCGUL Application on hold for a period of time.

In March of 1991, the Gas Contractors Association provided the Commission with general information about its own proposed Gas Appliance Protection Plan for residential gas heating appliances. Unlike the BCGUL Plan, the Association's proposed plan included an inspection and maintenance component as a prerequisite for repair insurance.

After reviewing the two plans and the information filed, the Commission determined that the FRP was in the public interest and issued Order No. G-47-91 approving the FRP with certain directions.

1.2 British Columbia Utilities Commission Order No. G-47-91

In its Reasons for Decision accompanying the Order No. G-47-91 (Appendix C), the Commission stated:

"The difficult determination for the Commission has been to anticipate the impact of utility vs. Association programs and ensure that customer needs are met without causing unfair competition between the furnace repair trade and the utility. In this circumstance, if the Commission is to determine that a utility program is desirable as a service to customers, then the Commission must also consider control to ensure fair competition. The Commission has considered that these programs are a matter of improved quality of service and customer convenience, rather than a critical service. Therefore, the Commission places greater emphasis on insuring a stand alone accounting of this program so that there is no cross-subsidy from customer gas rates."

In reviewing the Application the Commission focused on four key issues: Customer Needs, Financial Impacts, Safety Considerations, and Monopoly Competition. The Commission concluded from independent market surveys, conducted by both BCGUL (Exhibits #3, 10 - Appendix III) and the Mechanical Contractors Association (Exhibit #20A), that there was a demand for Furnace Repair Insurance. The price of \$59 which BCGUL intended to charge for its plan was consistent with that charged in other jurisdictions. The Commission imposed a cost-accounting scheme, including a full

allocation of overheads, to ensure that cross-subsidization and predatory pricing did not occur. The Commission felt that safety considerations expressed by the contractor organizations could be dealt with by requiring BCGUL to clearly identify, in its promotional materials, the need for periodic inspections to maintain equipment in a reliable condition. The Commission required BCGUL to submit promotional material to the Commission. Finally, the Commission expected that the constraints imposed on BCGUL in the operation of its plan were sufficient to address any monopoly concerns arising from the potential for monopoly advantage.

1.3 The Sands Inquiry

On March 31, 1992, BCGUL filed its 1991 Annual Report on the performance and profitability of the FRP (Exhibit #3, 2). After examining the Annual Report the Commission decided that further evidence and a review of the Plan was required and issued Order No. G-49-92, appointing Ms. Elsie Sands (the Inquiry Officer) to conduct a review of the Plan in accordance with specified Terms of Reference. The Order required the Inquiry Officer to deliver a report and recommendations (the Inquiry Report) for consideration by the Commission.

On September 8, 1992, the Inquiry Report with Recommendations was filed with the Commission. Based on findings made in the course of the Inquiry, the Commission decided to accept the Inquiry Report Recommendations and issued Order No. G-95-92 on October 8, 1992 (Appendix D), ordering compliance with the recommendations and setting out directions for the orderly winding up of the FRP. Conditions were identified for the future operation of a FRP if BCGUL wished to establish it as a non-utility company.

1.4 The International Brotherhood of Electrical Workers Request for Reconsideration of Order No. G-95-92

On November 10, 1992, the International Brotherhood of Electrical Workers Union - Local 213 ("the IBEW") applied to the Commission under Section 114 of the Utilities Commission Act ("the Act") for Reconsideration of Order No. G-95-92. By Commission Order No. G-121-92 the Commission denied this Application.

On January 21, 1993, under Section 115 of the Act, the IBEW filed a Notice of Application for Leave to Appeal to the British Columbia Court of Appeal. On March 3, 1993 Leave to Appeal was granted. The IBEW made a further request to the Commission that it reconsider its Decision and that it order a stay of the terms of the Decision pending a public review.

Following the second IBEW application, the Commission received a number of submissions from the Gas Contractors' Association of British Columbia, BCGUL and the general public regarding the cancellation of the Plan, the request for reconsideration, and the timing of a public hearing. As a result, the Commission concluded that a public review of the Plan and the Inquiry Report should take place prior to the next heating season.

The Commission issued Order No. G-39-93 ordering that a public hearing commence on July 12, 1993. The Hearing lasted six days and concluded on July 19, 1993.

1.5 The Scope of the Reconsideration

In issuing Order No. G-39-93, the Commission decided to review the Plan and the Sands Inquiry Report focusing on the 1991 Commission Order approving the FRP, the 1991 Annual Report, the Inquiry Report, views of the IBEW, BCGUL, the Gas Contractors and other interested parties.

Counsel for the Gas Contractors' Association submitted that the scope of the review in this case should be governed by the principles established by the Commission in its Decision of November 30, 1993 (the "November 1992 Reconsideration Decision") relating to an application by BCGUL for a reconsideration of a Decision of the Commission dated August 5, 1992. The Decision related to the BCGUL 1992 Revenue Requirements Application.

In the November, 1992 Reconsideration Decision the Commission adopted a two-stage process. The Commission determined that before proceeding to the merits of a Reconsideration Application, there should be an initial determination on whether or not the Application was of the type that should proceed to further examination. In that case, the Commission accepted four principles as a basis for requiring reconsideration: an error in fact or law; a fundamental change in circumstance or facts since the decision; a basic principle that had not been raised in the original proceedings; or, a new principle that arose as a result of the decision.

Counsel for the Gas Contractors' Association argued that the Commission should apply this test to the FRP application. In the circumstances of this case the Commission does not accept this argument. In reaching this conclusion the Commission notes that the principles referred to in the November 1992 Reconsideration Decision were accepted and applied in the context of an application for reconsideration of a matter that had been the subject of a public hearing.

The circumstances in this case differ. This hearing is the first time the matter of the FRP has been reviewed in a public hearing. In the November 1992 Reconsideration Decision the Commission also recognized that discretion should be given to allow further reconsideration in other situations. Moreover, in Item M of Order No. G-39-93, the reference is to *"a public review of the Plan and the Sands Inquiry Report..."*.

The Commission views this proceeding as an opportunity for a thorough review of the FRP and the findings of the Sands Inquiry. The Commission considers this to be particularly important in light of the high level of public interest shown in this issue.

2.0 THE SANDS INQUIRY

The FRP applied for by BCGUL was described as "an appliance insurance program" (Exhibit #3, 10). For a \$59 annual premium the FRP provided select coverage for furnace and boiler parts replacement. There was no pre-inspection required but there was a 15 day waiting period before the coverage took effect. The FRP was available to 450,000 Lower Mainland customers of BCGUL (T. 300). The Lower Mainland Division encompasses Greater Vancouver, the Fraser Valley and east to Hope (Exhibit #26).

Commission Order No. G-47-91 approving the FRP required BCGUL to file an Annual Report with the Commission. On March 31, 1992 BCGUL filed the Annual Report for 1991. The Commission, after reviewing this report, concluded that further evidence was required. Under Section 93(2) of the Act the Commission established an Inquiry and appointed Elsie Sands to conduct a review of the FRP in accordance with Terms of Reference set out in Order No. G-49-92 (Exhibit#3, 1).

The review was to investigate the concerns expressed by representatives of the gas industry, the views of subscribers to the FRP, the position of BCGUL, and the performance of similar plans in other jurisdictions.

In discussions with representatives of the gas industry the Inquiry Officer was asked to evaluate the impacts of the FRP, changes to the plan which would accommodate concerns and minimize impacts, and the need for annual or periodic inspections as a prerequisite for furnace parts insurance.

The Inquiry Officer was required to meet with a representative sample of subscribers to the FRP to examine recruitment methods, expectations of the FRP, alternatives considered, views of the FRP and suggested improvements.

With respect to BCGUL the Inquiry Officer was required to determine the continued justification of the FRP, the financial benefits of the plan to BCGUL customers and shareholders, the use of any monopoly advantages, and the connection between furnace insurance and inspections.

2.1 Methodology

In conducting the Inquiry, the Inquiry Officer reviewed background information provided by the Commission. Interested parties were identified and contacted. Input from BCGUL, the IBEW, the

Office and Technical Employees Union - Local 378, and independent gas contractors was obtained through meetings, correspondence and telephone interviews. Input from 50 subscribers selected at random was obtained by mail questionnaire and a few telephone interviews. In addition, utilities in Quebec, Ontario and the United States, furnace manufacturers and others were contacted.

2.2 Findings

On the basis of the information obtained through the Inquiry, the Inquiry Officer found that the FRP resulted in direct competition with contractors in the furnace repair business. The Inquiry Officer concluded that this constituted a fundamental change in the nature of the relationship between the gas utility and the contractors in the area. The Inquiry Officer also found that BCGUL has a special position within the residential gas marketplace in British Columbia as a result of its position as a monopolistic distributor of gas for domestic use. In the view of the Inquiry Officer, that special monopoly status gave BCGUL unfair advantages in the field of residential gas repair. These advantages included the potential for cross-subsidization by other parts of the utility, and marketing opportunities through access to customer lists and customer contact under the emergency service program.

The Inquiry Officer concluded that a "need" for the plan had not been demonstrated. It was noted in the report that independent gas contractors had adequately met requirements of residential gas users for furnace repairs prior to the introduction of the plan and that the number of subscribers to the plan was not sufficient to demonstrate a need.

The Inquiry Officer also concluded that there was unfair competition between the BCGUL plan and the furnace repair business operated by the contractors and that there was no common ground to alter the plan to accommodate the concerns of the interested parties.

The recommendations of the Inquiry Officer were that the FRP be wound up and that BCGUL be given the option of operating such a plan through an arms-length affiliate which derived no benefit whatsoever from any association it may have with BCGUL.

In the hearing the methodology and findings of the Inquiry were questioned. Dr. Allen and Dr. Campbell, appearing as witnesses for the IBEW, maintained that the survey methods used in the Inquiry were not conducted according to recognized research or statistical standards. The small sample

size and low response rate were considered to preclude any reasonable reliance on the survey data obtained or conclusions drawn.

The Commission has been conscious of the opinions of Dr. Campbell and Dr. Allen in weighing the evidence in the Inquiry Report. Moreover, this hearing has provided the Commission with an opportunity to review and re-examine many of the same issues. In this Decision the Commission will address the issues under four sections; Public Interest, Safety, Monopoly and Fair Competition, and Financial Impact.

3.0 PUBLIC INTEREST

In his opening statement Counsel for BCGUL stated that one of the most important issues before the Commission in this hearing is the determination of where the public interest should lie. Counsel for BCGUL and Counsel for the IBEW both noted that the public interest in this case encompassed a number of interests, in particular, the customers, shareholders, employees and plan subscribers of BCGUL, and the contracting community.

3.1 BC Gas Utility Limited

It was the position of BCGUL that it is in the public interest to restore the plan as approved by the Commission in 1991. BCGUL maintained that the plan benefitted its utility customers in a number of ways. Firstly, the plan provided an additional service to customers in the Lower Mainland Division. At the time the plan was introduced, no comparable plan was being offered. Secondly, excess revenues from the plan would eventually flow back to the utility and assist in keeping rates down for all of the utility's customers (T. 140). Thirdly, BCGUL anticipated that the return earned on the inclusion of the additional investment in the rate base would benefit the shareholders. In the year the FRP was in operation it attracted over 16,000 subscribers (Exhibit #5, Tab A, p. 3).

The BCGUL panel testified that no new employees were added as a result of the introduction of the plan. Utilization technicians, who did the appliance tuning and diagnostic work under the emergency service program, received training to undertake furnace repair work. About 100 technicians were involved in work under the plan. Three new customer service positions were added and filled with employees from elsewhere within the organization.

Counsel for BCGUL noted that, in determining that the plan was in the public interest, the Commission in its Reasons for Decision for the approval of the Furnace Repair Plan in 1991, focused on four key issues; namely, customer needs, financial impact, safety considerations, and monopoly competition. In that decision, the Commission emphasized that the plan was not a critical service and, as such, greater emphasis should be placed on insuring stand-alone accounting of the program. In argument Counsel for BCGUL maintained that BCGUL implemented its FRP in accordance with the Commission's directive.

3.2 Plan Subscribers

Plan subscribers who appeared at the hearing or provided written comments to the Commission for

inclusion in the hearing record supported reinstatement of the FRP.

Subscribers gave a number of different reasons in favour of the type of plan offered by BCGUL. The FRP provided peace of mind and was considered to be convenient, reasonably priced, and good value. In contrast, combined plans offered by contractors were seen as too costly, and the inspection and maintenance component in the combined plans as unnecessary. Subscribers who undertook their own furnace maintenance liked the separate repair insurance (T. 99). The FRP gave consumers another choice. Subscribers supported the BCGUL plan because of the reputation, reliability and service provided by the company. In addition, customers throughout the Lower Mainland Division of BCGUL had access to the FRP through a single source. In contrast contractor plans provided only regional coverage mainly concentrated in the areas of denser population. One subscriber thought BCGUL was brave to take on subscribers with older furnaces at \$59 without a pre-inspection. Another subscriber qualified his support for reinstatement on the basis that the FRP would not result in rate increases or costs to other gas users to finance the plan (Exhibit #4).

Counsel for the B.C. Branch of the Consumers' Association, the Federated Anti-Poverty Groups of B.C. and the Senior Citizens Association of B.C. submitted in argument that the plan was of particular importance to his clients. Many were senior citizens who would like the convenience of dealing with the utility for repairs because they were familiar with it. He also speculated that people with fixed incomes might favour the plan because they wanted to avoid a sudden high expenditure on repairs.

The evidence shows that there was confusion amongst some FRP subscribers about the nature and scope of plan coverage. There was confusion over what furnace parts were actually covered by the FRP and some thought maintenance was included in the coverage. Some subscribers were unaware of the emergency service program offered by BCGUL and joined the plan for the security of knowing whom to contact at the time of a furnace failure. Other subscribers believed the FRP enhanced appliance safety (T. 110).

Several subscribers who testified at the hearing were unaware that some contractors have responded to the introduction of the BCGUL plan by offering identical plans of their own. Some subscribers indicated that they had tried to find out about alternative plans but had difficulty contacting the Gas Contractors Association or finding out which contractors offered the same type of plan. There were some reservations expressed about the ability of contractors to provide the same level of service as BCGUL and to extend coverage over the same geographic area. There was concern about contractors remaining in the business and about the qualifications of employees hired by contractors to do residential repair work. The evidence of the contractors who appeared at the hearing shows that there

are many companies who have been in the repair business for a long time, who have offered maintenance and repair insurance plans prior to BCGUL, and that employees in the repair business are required to have Provincial Gas Fitter licences.

Some subscribers indicated that they would be prepared to purchase the same program from the contracting community (T. 112). Contractors who offered similar plans to BCGUL, although reluctant for business reasons to provide specific numbers, did indicate there was a good level of subscriber interest.

In the year the plan was in operation it attracted a subscribership of about 4 percent of BCGUL's Lower Mainland Division customers. Projections of BCGUL over a five-year period, forecast a subscriber interest of 63,840 (Exhibit #3, 10). Studies conducted for BCGUL by Campbell Goodell Consultants Ltd. and for the Mechanical Contractors Association by Paul D. Allen (Exhibit #20A) both noted that interest in an insurance plan was price sensitive. For example, in the Campbell Goodell study, which surveyed 507 BCGUL customers, between 19 and 30 percent of the sample would purchase insurance at \$40 per year. Only 10 to 20 percent showed an interest at \$60 per year (Exhibit #3, 10 - Appendix 3).

3.3 Contractor Community

The evidence presented by Mr. Traynor on behalf of the Mechanical Contractors' Association, and Mr. Lillie and Mr. Ricard of the Gas Contractors Association, along with the evidence of the majority of the other contractors who made submissions, opposed reinstatement of the plan. It was their position that the utility was competing in a business that was traditionally the domain of the gas contractor, namely furnace repairs. While the contractors were not opposed to fair competition, they maintained that the monopoly position of BCGUL gave the utility an unfair competitive advantage.

The contractors maintained that the plan would result in a decline in their repair business as potential repair customers were lost to the plan. They feared the loss of repair work in the residential sector would encourage contractors to move into the commercial and industrial sector. The contractors were also concerned, in spite of assurances to the contrary, that BCGUL would institute other business activities in direct competition with the contractors which would lead to further displacement within the industry.

The estimated number of gas contracting companies in the Lower Mainland and Fraser Valley involved in the residential appliance, installation and service market was about 300 (T. 472, 601).

3.4 Commission Conclusions

In determining whether or not the same plan is still in the public interest the Commission needs to address the issues in detail in the context of the Commission's 1991 Decision approving the FRP.

The Commission, in its 1991 Decision approving the FRP, found that it was a convenience rather than a critical service. The Commission is still of this view. However, the Commission recognizes that the plan has provided an additional option for the consumer and that there is interest in retaining such an option. The Commission is of the view that the public should have a variety of options to choose from and would like to see this type of plan remain in the marketplace. The Commission notes there is price sensitivity in that regard and interest in the plan diminishes quickly if costs rise significantly above the existing price.

The Commission has concluded that there is a lack of information among BCGUL customers about the services provided under the emergency service program for which the customer is already paying under the tariff.

The Commission notes that the public has experienced difficulties in examining the alternative plans offered by contractors. The Commission sees the need for improvement by the contractors and the Gas Contractors Association in the areas of accessibility and the provision of information to the public.

While the Commission recognizes that some individuals may have misapprehensions about dealing in general with small business, the Commission notes that many of the perceptions mentioned at the hearing about the contractors were not supported by the evidence.

4.0 SAFETY ISSUES

4.1 Safety and Commission Orders

The issue of safety of gas appliances was first raised by the Commission in a letter to BCGUL on February 1, 1989 (Exhibit #3, 3). In this letter the Commission expressed concern about the safety of aging gas appliances and made reference to a service and inspection package offered by another gas utility. The letter requested comment from BCGUL on the feasibility of undertaking such a program in its service area.

The exchange of communications led the Commission to issue to all regulated gas utilities in B.C., Order No. G-43-89 dated July 20, 1989, subsequently amended by Order No. G-48-89 dated October 5, 1989 (Exhibits #3, 4 and 5). These two Orders, issued under Section 28 of the Utilities Commission Act, required that:

- a) Provincially regulated gas utilities develop a brochure notifying customers that annual servicing of appliances by a licensed gas fitter is advisable. The brochure was also to give some basic advice on recognizing common appliance faults and what action to take.
- b) The brochure should be sent to all customers periodically beginning in 1990.
- c) A suitable inspection/maintenance package for customer appliances should be developed by the utility in cooperation with the provincial gas service trade and all member organizations prior to the mail-out.
- d) Utility repair, maintenance and service personnel should visually inspect and report on the condition of residential gas appliances whenever there are service calls or meter changes.
- e) A brief report summarizing problems identified through such inspection was to be forwarded to the Commission annually.

In cooperation with the gas service industry, BCGUL developed a brochure together with a gas appliance safety check sheet (Exhibits #3, 6 and 7). The brochure was distributed to all customers in 1990 and BCGUL stated their intention to again distribute the brochure in 1993 (T. 51). The safety issue and industry response was reported in detail on pages 6 and 7 of the Inquiry Report (Exhibit #3).

At the Hearing the BCGUL panel testified that, in a typical year, the Company responded to 100,000 calls to the service centre (T. 227), and dispatched service representatives to the customer's location in response to approximately 70,000 of these calls. Approximately 24,000 of these calls involved furnace cleaning or re-lighting problems. In addition, some 30,000 to 35,000 customer service calls are made each year to change out meters. BCGUL made the required summary reports of problems encountered through visual inspections to the Commission on an annual basis. In response to questioning by Commission Counsel, the BCGUL panel stated that the response by customers to the suggestion that appliances be inspected annually by a licenced gas fitter has been minimal (T. 239).

4.2 BCGUL Views on Safety

The BCGUL panel repeatedly stated that customer safety was of paramount concern to the Company (T. 303) but they also clearly differentiated between safety inspections and the purpose of the FRP (T. 28). The FRP was intended purely as an insurance program to amortize the cost of replacement of specified component parts. BCGUL has safety services and diagnostic services available to all customers on request through the emergency service program. No individual charge is made for these services but the cost is included in the revenue requirement of the Company and is, therefore, paid by all customers by way of their gas rates.

The BCGUL panel stated that a Service Options Survey by Campbell Goodell Consultants Ltd. in December, 1989, revealed that 40 percent of those sampled said they were "*very interested*" in annual appliance safety inspections (Exhibit #5, Tab 1). The same survey indicated that only 19 to 30 percent of the sample group were interested in purchasing appliance insurance. However, 61 percent of those interested said they would prefer the gas company as the source of this insurance. The sample involved a telephone survey of 507 homeowners who are also BCGUL customers and living in the BCGUL Lower Mainland Division (Exhibit #3, 10 - Appendix III).

On the basis of customer concern for safety, the BCGUL panel were asked why they chose not to offer a safety and maintenance package but only an insurance plan for parts. In the filed evidence, and also in response to questions from the Commission, the panel stated that, as private gas contractors were already performing safety inspections for a fee, the Company chose not to enter into direct competition with the contractors for this business (Exhibit #5 and T. 851). The Inquiry Report stated that, on the basis of the Campbell Goodell Consultants Ltd. survey, BCGUL also thought that the customer participation rate for a necessarily more expensive plan that included safety inspection and maintenance, as well as parts replacement insurance, would be too low to make such a plan financially viable (Exhibit #3, p. 7). This was reconfirmed by BCGUL at the hearing (T. 28).

4.3 Gas Contractors and Safety

The independent gas contractors were generally not in favour of a furnace repair plan which did not include an annual safety and maintenance inspection. They felt that an insurance plan without an inspection component could lull householders into a false sense of security regarding their gas appliances. They were particularly opposed to BCGUL entering the field with an insurance plan which required no inspection. They felt that subscribers to the BCGUL plan would then be reluctant to pay an additional fee to a private contractor for inspection and maintenance. Their view was that this was not in the best interest of public safety.

In 1990, the Mechanical Contractors Association commissioned a market research study on furnace service options available to the Vancouver area market (Exhibit #20A). The survey was conducted by telephone with a sample of 400 homeowners selected at random.

In the survey results, homeowners indicated significantly higher interest in options offering safety inspection than they did for repair insurance only. Almost half of the respondents were *"quite interested"* in the options which provided inspection compared to one-third for annual repair insurance only. This parallels the finding of the Campbell Goodell Consultants Ltd. survey.

In assessing the importance of reasons for having safety and maintenance inspections, "safe operation" was considered quite important by 90 percent of the sample, and "peace of mind" was rated quite important by 88 percent of those surveyed.

4.4 Commission Conclusions

The Commission believes that safety is a primary concern and that periodic inspections of gas appliances are desirable to ensure safe and efficient performance. The increasing complexity of newer high efficiency equipment increases this need. Some manufacturers of the newer furnaces recommend annual inspection and that repairs and adjustments be made only by their authorized servicemen.

In its Reasons for Decision, attached to Commission Order No. G-47-91, which granted approval for the BCGUL Furnace Repair Plan, the Commission took the position that *"mandatory, annual, pre-qualification inspections are not essential to a parts insurance plan"* and also that *"depending upon the particular equipment and its age, a period of three to five years may be more in keeping with reliability concerns"*. The Commission is still of this view.

BCGUL maintains that safety and insurance are two separate and identifiable issues (T. 85). The Commission concurs with BCGUL that a properly constituted insurance program could be differentiated from safety. At the same time, the Commission believes that the nature of the promotional material used by BCGUL to sell their FRP could readily introduce confusion in the minds of some of their customers. It is not clear that all customers understood clearly the limitations of the FRP. Nor is it clear that all gas customers know the extent to which they are entitled to Safety and Diagnostic Services from BCGUL which are already paid for in the gas rates charged. In order to separate the potential financial benefits of an insurance plan from safety considerations of gas appliances, it is essential that the gas customers be informed of their options in clear and unmistakeable language. It is the view of the Commission that an insurance plan must not be presented in a manner that allows confusion to prejudice safety. If there is confusion, or a perceived overlap of intention, safety must become the primary consideration.

5.0 MONOPOLY AND FAIR COMPETITION

Prior to the introduction of the FRP, all gas furnace repairs in the Lower Mainland area were carried out by independent contractors. BCGUL did provide Safety and Diagnostic Services, including the replacement of thermocouples if necessary, as part of its regular emergency service to all customers. Repairs by independent contractors were generally charged on the basis of hourly labour and parts replaced. Some contractors offered annual safety inspection and maintenance service for a fee. Others offered this service together with an optional repair insurance plan. There were some 300 of these businesses in the Lower Mainland each having from 1 or 2, up to 50 to 60 employees (T. 472, 571). Many sold and installed gas appliances while others were involved only in repair services.

A BCGUL witness testified that prior to initiating the FRP, the Company had considered offering repairs for a fee or inspection for a fee, but rejected these alternatives as the contracting trade was already involved in those areas (T. 44). He stated that BCGUL chose the repair insurance field because it did not appear to be adequately served and that it is a type of program which only functions well when operated on a large scale; that is, it requires a large customer base and an organization which can offer it broadly (T. 45).

Evidence presented at this hearing by Dr. Robert Allen, an expert witness for the IBEW, supported the position that *"Only a large firm can offer furnace repair insurance"* (Exhibit #21, p. 6). He also said that *"In order to provide a service you have to have enough resources to meet the fluctuations and demands"* (T. 428). The BCGUL panel, in response to questioning by counsel for the Gas Contractors Association, agreed that the reserve amount set aside for the fluctuations by BCGUL in its financial projections was within the means of many small businesses.

Evidence presented to the Inquiry, and at this hearing, indicated that the gas contractors were strongly opposed to the entry of BCGUL into the furnace repair business. The independent contractors expressed distrust of BCGUL's objectives. They also felt that the utility had a monopolistic advantage due to its size and position as the sole distributor of gas for home heating in its service area. They argued that because of this monopoly advantage, fair competition could not exist and that BCGUL should not be permitted to compete with them in the furnace repair business.

The feeling of distrust by the gas contractors was expressed in the Inquiry Report as follows:

"The contractors see BC Gas' expansion into a field previously handled by independent furnace repair contractors as the thin edge of the wedge. They are concerned that BC Gas will next want to implement its own gas furnace inspection and routine maintenance plan, a general furnace repair service on the basis of a charge for labour

and materials, a furnace repair plan for customers other than residential gas users and a sales and installation division". (Exhibit #3, p. 19)

The BCGUL panel testified that the Company had no intention of entering these fields and that, in any case, it would require prior approval of the Commission (T. 177).

There is agreement between BCGUL and the contractors that a high percentage of calls for repair service involve cleaning, relighting pilot lights, or replacing thermocouples (T. 327, 611). These are also among the services which BCGUL provides to all of its gas customers in the Lower Mainland Division under the current tariff, without additional charge. BCGUL took the position that the synergies available in the use of trained technicians, vehicles and support services for both the regular service and the FRP provided net savings which benefited all gas customers (T. 249). Conversely, the contractors held that this joint use of plant and personnel represented a monopolistic advantage that resulted in unfair competition.

The contractors expressed the view that in using regular service personnel and equipment for handling insurance calls under the FRP, customers of BCGUL were exposed to the potential of cross-subsidization and predatory pricing of the insurance plan. BCGUL was also considered to have a monopolistic advantage in having customer mailing lists, and customer contact through the emergency service program and the billing system.

Dr. Robert Allen stated that BCGUL is a monopoly supplier in the retailing of natural gas, but is not a monopolist in the furnace repair industry (Exhibit #21). He maintained that at the time the FRP was discontinued, BCGUL had only a "tiny fraction" of the furnace repair business. Even if it was eventually successful in signing up some 30 percent of its customers as it hoped, BCGUL would still be supplying a minority share of the furnace repair market.

BCGUL acknowledged that it does have advantages due to size and reputation but it believes that these advantages are properly used in providing an additional service to its customers. It noted that the FRP was well received with 16,000 subscribers in the first year of operation. It claimed that the FRP would help stabilize rates by providing a revenue contribution and rejected the allegation that the FRP was using monopoly advantages unfairly. BCGUL noted that the \$59 plan premium was market-based and, if cost-based would be lower. BCGUL expressed the view that the FRP was the result of extensive compromise to meet contractor concerns and that they should be allowed to reinstitute the plan.

At the hearing Mr. Norman Adelman, a witness for the Gas Contractors Association, presented evidence relevant to the area of utilities entering into non-utility markets traditionally served by independent businesses. His evidence was based on 15 years of work-related experience and from testifying before a number of regulatory agencies in the United States. He supplied information on how issues such as unfair competition, cost allocation and regulatory legislation were being looked at in other jurisdictions. Part of his evidence focused on proposed legislation in New Jersey designed to identify and separate utility and non-utility functions.

In response to questions from the Commission, a witness for BCGUL agreed that the FRP, of itself, did not create new employment within the industry. As repairs to furnaces were going to be carried out in any case, work performed under the FRP was simply transferring work from independent contractors to utility employees. Although BCGUL indicated a desire to contract out up to 30 percent of the repair work, it was not in favour of contracting out a larger part of the repair work as this would necessitate increased supervision, raise costs, and the FRP would lose its utility identity. Evidence of the contractors did not support further contracting out as a solution as they feared loss of independence, and felt that there was no job stability in working for the FRP.

The Gas Contractors' Association presented a furnace repair insurance scheme to the Commission prior to approval of the BCGUL Application. The plan did not spell out uniform coverage or pricing as this was left to each individual independent firm. In compliance with Commission direction, BCGUL did advertise the Gas Contractors' Association telephone number. However, following approval of the BCGUL FRP the Gas Contractors' Association plan was never implemented. Some contractors responded to the introduction of the FRP by offering similar plans at the same price.

The Inquiry concluded that BCGUL had an advantage in being able to promote direct sales of insurance contracts through contact with residents on regular service calls. BCGUL actions would appear to support this conclusion, in that it does not employ contractors with rival insurance plans for contract work under the FRP, to avoid having their personnel solicit subscribers for their own plans (T. 824).

The Commission was concerned that the utility would use its monopoly advantage, in areas other than price, to create unfair competition with the existing furnace repair industry. In Order No. G-47-91 the Commission stipulated that *"prior to informing the public, BC Gas will submit its promotional material to the Commission so that the Commission can confirm that the conditions in Item 3 (of the Order) have been adequately addressed"*.

5.1 Program Experiences

The BCGUL Annual Report for 1991 (Exhibit #3, 2) indicates that the FRP began operation during August, 1991. By the end of the year, 5,552 customers had joined the plan. In response to direct mail advertising used in January and February, 1992, FRP subscriptions rose to 14,258 by March 19, 1992, the end-date of the 1991 Annual Report. BCGUL stated that during the initial operating period from September, 1991 to mid-March, 1992, *"A 'best-guess' estimate of Lower Mainland repair activity from September, 1991 to March 19, 1992 suggests that a total of one man-year has been expended"* (Exhibit #3, 2 page 5). Approximately 28 percent of this repair work was contracted out to 48 local plumbing and heating contractors. From January 1 to mid-March, 1992, approximately 500 repair calls were made with 192 being contracted out.

Advertising used consisted of 90 percent bill stuffers and 10 percent direct mail. The brochure used was submitted to the Commission for approval and, following Commission suggestions, some revisions were made. However, the promotional letters accompanying brochures or used in direct mail advertising were not submitted to the Commission for approval. The Commission later expressed concern over the potentially misleading tone and content of these letters.

Findings of the Sands Inquiry indicated that start-up costs had been higher than expected and that BCGUL had revised a number of accounting practices. While BCGUL testified that the FRP was designed to meet market levels in excess of program costs, the actual results indicate that the FRP did not cover its full costs. Section 6.0 of this Decision gives further details.

Without dwelling on the details of the financial calculations, this hearing has made the Commission aware of additional costs attributable to the plan. In particular, the Commission first learned from the evidence that BCGUL would allocate emergency service callouts as a utility cost unless a specific repair covered by the FRP was undertaken (T. 274). This action is directly at odds with the Commission's stated intention to remove any potential for the utility to undertake predatory market pricing at the expense of other customers. The appropriate action would be that all callouts to FRP customers be allocated to the FRP. Otherwise the potential for cross-subsidization and market advantage exists.

The Commission heard other concerns in this hearing related to other direct or indirect advantages that a utility could exploit to gain a market advantage over private contractors. The proposed legislation from the State of New Jersey entitled The Consumer Energy Fair Competition Act ("CEFCA") includes a relatively comprehensive list of items which would constitute market advantage for a utility. Apart from the full costing issues already identified, the CEFCA lists other financial subsidies that might be

conferred to an insurance plan such as the loan of funds and the availability of space within the utility premises. The CEFCA also sets a requirement that the name of a utility repair plan not resemble the name of the utility, not be located at the premises of the utility and not make use of the information services of the utility. Most of these issues were addressed in the recommendations of the Inquiry Report. The option recommended in the Inquiry Report to form an arms-length affiliate was rejected by BCGUL on the basis that for insurance only this alternative would not be financially viable (Exhibit #4, A1, p. 9).

5.2 Commission Conclusions

Based on the evidence in this hearing, the Commission concludes that BCGUL is engaged in a business in direct competition with existing independent contractors undertaking furnace repairs. The Commission had previously had the expectation that BCGUL would work with the trade interests to develop mutually acceptable programs. This has not occurred and, as a result, the Commission must deal with the monopoly and fair competition issues.

The Commission finds that the full value of synergies resulting from the joint use of utility assets, such as personnel and vehicles, should accrue to the utility and be shared by all utility customers. This feature would eliminate any special advantage the utility might exert over independent competitors.

The full cost of FRP customer emergency calls should be allocated to the FRP to avoid unfair competition with other insurance plans. This cost component does not appear to have been factored into any of the financial scenarios presented by BCGUL.

The BCGUL Annual Report for 1991 shows that advertising for the FRP was through bill stuffers and direct mail to a captive mailing list. This represents an unfair monopoly advantage. Finally, the letters used in the advertising promotion of the FRP were not submitted to the Commission prior to use. This is contrary to paragraph 4 in Commission Order No. G-47-91, which specifically required that all promotional material was to be first screened by the Commission.

In considering all of the evidence developed during the course of operation of the FRP and during this hearing, the Commission is not convinced that BCGUL has demonstrated that the FRP has been operated truly on a "stand-alone basis" with the avoidance of any "predatory market pricing" with respect to other industry sponsored programs. Actions, such as having BCGUL service personnel soliciting business for the FRP from homeowners when they attended service calls, run counter to the

Commission direction that "promotion" should equally identify the availability of other insurance plans. This results in a specific market advantage for BCGUL.

6.0 FINANCIAL IMPACT

6.1 Commission Requirements

The Commission in the Reasons for Decision accompanying Order No. G-47-91 (Exhibit #1), which approved the BCGUL Furnace Repair Plan, stated:

"In approving the BC Gas Plan, the Commission recognizes that there could be the potential of cross-subsidy by other utility customers if the anticipated number of applications is not realized or the average cost of claims exceeds those forecast. In order to address this concern, the Commission will require an accounting of all costs and revenues attributable to the BC Gas Plan, including a full allocation of overheads. If there is an excess of costs over revenues, the Commission will carefully consider the reasons and may disallow such costs that should have been reasonably foreseen. This measure removes any potential for the utility to undertake predatory market pricing at the expense of private industry, and will protect other utility customers."

In order to monitor the above requirements, the Commission directed BCGUL to file an Annual Report with respect to the Plan. The 1991 Annual Report, dated March 31, 1992, covered the costs and revenues for the operating period ending December 31, 1991.

6.2 BCGUL FRP Annual Report

In support of the October 23, 1990 application to the Commission for approval of the FRP, BCGUL provided financial projections for the expected case scenario (Exhibit #3, 10 - Appendix IVc). The financial projections utilized a revenue requirements model to demonstrate the economic justification of the FRP. The analysis projected that the FRP would become profitable in its first full year of operation and projected a total revenue excess of over \$8.6 million in a ten-year period. Since no volume was forecasted in the partial first year, \$197,400 of the direct costs were deferred to be amortized in the second year of operation.

Instead of a direct comparison with the above forecast, BCGUL provided schedules in the 1991 Annual Report showing only direct revenues and costs with overhead loading for the actual 1991 results (T. 332). The actual results for approximately five months in 1991 showed that the Company suffered a loss of \$110,600 after deferring 2/3 of certain direct costs, or \$199,205, to 1992 and 1993 (Exhibit #3, 2 - Appendix I). In addition, a return on capital was not imputed into the loss. Therefore,

the prediction by BCGUL that excess revenue from the FRP could help to reduce gas rates generally did not materialize.

6.3 Subsequent Financial Analyses

It was the position of the BCGUL panel that other customers would benefit from the contribution approach with respect to the FRP. However, it is important that all costs associated with the plan are fully and properly allocated to the FRP. Firstly, all resources of the utility are expected to be fully used and useful, i.e., no idle resources; any new activity is expected to incur incremental overhead along with the direct costs. The application of full average overhead, while not perfectly representing true overhead related to the project, will at least provide a proxy for long-run incremental cost associated with the project. Secondly, costs must be related to time. Over a short period the contribution approach may save the plan from being terminated, but over a longer period, as in the case of a five year forecast, most fixed costs are no longer fixed. Therefore, the FRP must be allocated the burden and overhead costs of the utility in the same way as these costs are applied to other projects. Thirdly, and most importantly, a utility project once justified will be immediately absorbed in the general rate base and overall cost of service calculations, and customers will be required to pay rates for the revenue requirement including an average rate of return on the whole rate base. If the FRP is not being charged the full overhead or a return on capital, some other projects or customers will have to subsidize it. On questioning by the Commission, the BCGUL panel agreed that "adding the overhead has a fairly significant impact" (T. 333).

In a similar analysis to that provided in the BCGUL Annual Report, evidence provided by BCGUL shows that the FRP suffered a loss of \$475,100 in 1992 after certain charges had been deferred for amortization over three years (Exhibit #7, Item 2). This analysis also shows a 1993 year end forecast loss of \$793,300 including the costs of discontinuing the plan. None of the above accounted for a required return on capital which otherwise would have to be subsidized by other customers.

BCGUL submitted evidence on the case where the FRP starts up again in August 1993 with only 65 percent of the previously forecast subscribers participating (Exhibit #9). Under an analysis consistent with the previous calculations, i.e., with full overhead applied, the FRP would not achieve breakeven until the fifth year. By this time, a cumulative net revenue loss of \$644,600 would have been accumulated. (T. 152). In the analysis, BCGUL adopted a third-party charge-out rate as an approximation of the full overhead rate (T. 151, 332). However, this analysis does not include the allocation of the cost of all FRP service calls to the FRP.

Further BCGUL evidence shows the FRP being operated as a non-utility business, although it would not meet the conditions of the Inquiry Report Recommendations, i.e. that the FRP should not share the use of premises, equipment, inventory, personnel or the resources of BCGUL (Exhibit #7, Item 4). Analysis A shows that a 10-year projection, assuming that the use of BCGUL service personnel is charged with full direct costs and overheads, would not become profitable until the fifth year or achieve positive cumulative revenue until the seventh year of operation. If full overhead is applied on all costs, including personnel, Analysis B shows that the FRP would not be profitable until beyond the fifth year. Accumulated losses would either remain outstanding or would have to be absorbed in the utility revenue requirements.

The variation in results of the above scenarios appears to depend on the level of overhead charged to the FRP. It is noted that overhead was charged at approximately 68 percent of total direct costs in 1991, 39 percent in 1992 and 34 percent in 1993 (Exhibit #7, Item 2). This decreasing trend appears to be at variance with the original direction of the Commission which stipulates that "a full allocation of overhead" must be charged to the FRP.

6.4 Commission Conclusions

The Commission concludes from its review of all the evidence that, from the inception of the program through the conclusion of this hearing, the FRP was not operated in a manner consistent with the original financial objectives enunciated in the Commission's Reasons for Decision accompanying Order No. G-47-91. It is the position of the Commission that full-cost accounting practices and appropriate marketing practices are essential ingredients to any acceptable utility insurance plan.

The Commission is concerned about the difference between the financial forecasts expected by BCGUL in its original application and the results obtained over the period the plan was in operation. Financial projections undertaken by BCGUL show substantial losses. With reinstatement of the plan and full overhead applied the plan would still incur losses until at least the fifth year of operation.

The evidence shows that BCGUL did not follow the original direction given by the Commission regarding the full allocation of costs and overhead to the plan. It is the view of the Commission that reinstatement of the plan at the existing market-based price would be difficult to justify.

Another concern in the hearing was the description of overhead charges applied to the FRP. Terms used were: third party overhead, direct and indirect overhead (T. 787); variable and fixed overhead; and internal and external overhead (T. 788). The Commission finds these terms unclear and without definition could be misleading. The Commission finds it difficult to determine if all costs have been allocated appropriately to ensure that insurance plan costs have been clearly segregated from other cost of service.

7.0 COMMISSION DETERMINATIONS

In reviewing the FRP and the Inquiry Report, the Commission has focused on the level of compliance with Order No. G-47-91 and the accompanying Reasons for Decision. On the basis of the evidence presented, the Commission makes the following determinations:

1. Independent customer surveys and other evidence presented at the hearing demonstrated that customers are interested in protecting themselves against unexpected furnace repair expenses through the purchase of insurance. In the Reasons for Decision attached to the 1991 Order, the Commission considered that such plans are a matter of improved quality of service and customer convenience rather than a critical service. The Commission is still of this view.
2. In the same Reasons for Decision the Commission expressed the belief that safety and insurance considerations need not necessarily be linked in the same program. The Commission reiterates that safety is a primary concern and periodic inspections of gas appliances are desirable to ensure safe and efficient performance.
3. The Commission finds that BCGUL has not complied with the direction in the 1991 Reasons for Decision, in that there was to be a full allocation of overheads to the FRP and stand-alone accounting. The Commission also recognizes that there is some duplication in service between the FRP and BCGUL's emergency service program and that the costs are not being allocated appropriately. FRP losses incurred will result in a cross-subsidization from utility rates if the Commission allows the losses to be recovered in revenue requirements.
4. The Commission finds that BCGUL did comply with the direction in the 1991 Reasons for Decision to include the Association telephone number in promotional material on the FRP. However, not all of the promotional material was submitted to the Commission as required.
5. The Commission finds that all gas customers are not adequately informed about BCGUL's emergency services. The Commission directs BCGUL to provide information about its Safety and Diagnostic Services to all of its customers.
6. The Commission finds that there is interest in a furnace parts insurance plan and that it is in the interest of the consumer to have such an option available. However, the Commission finds that the BCGUL Plan has not adequately met many of the directions in the 1991 Reasons for

Decision approving the plan. For these reasons the Commission finds that it is not in the public interest to approve reinstatement of the FRP.

DATED at the City of Vancouver, in the Province of British Columbia this 17th day of September, 1993.

Original signed by:

Lorna Barr
Deputy Chair and Chair of the Division

Original signed by:

Kenneth Hall
Commissioner

Original signed by:

Katherine Wellman
Commissioner



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BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-82-93

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AN ORDER IN THE MATTER OF the Utilities Commission
Act, S.B.C. 1980, c. 60, as amended

and

A Report by an Inquiry Officer on the BC Gas Utility Ltd. Furnace Repair Plan

BEFORE: L.R. Barr, Deputy Chairperson;)
K.L. Hall, Commissioner; and) September 17, 1993
K.D. Wellman, Commissioner)

O R D E R

WHEREAS:

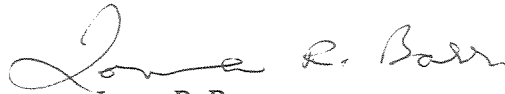
- A. The Commission, by Order No. G-47-91, gave approval to the BC Gas Utility Ltd. ("BCGUL") Furnace Repair Plan and issued "Reasons for Decision" attached to that Order; and
- B. The Commission by Order No. G-49-92, appointed Ms. Elsie L. Sands to conduct an Inquiry on the Furnace Repair Plan under specified terms of reference, and to make a report; and
- C. Following receipt and review of the Inquiry Report, the Commission by Order No. G-95-92 required the Furnace Repair Plan to be terminated by BCGUL on the anniversary date following October 8, 1992 for each customer enrolled in the Furnace Repair Plan; and
- D. On November 10, 1992 the International Brotherhood of Electrical Workers - Local 213 ("the IBEW") applied to the Commission, pursuant to Section 114 of the Utilities Commission Act ("the Act") for reconsideration of the Decision to terminate the Furnace Repair Plan; and
- E. Following a review of the filings, the Commission by Order No. G-121-92, denied the IBEW request for reconsideration; and
- F. On March 29, 1993, the IBEW applied to the Commission, pursuant to Section 114 of the the Act, for a further Reconsideration of Order No. G-121-92; and
- G. Following consideration of the IBEW request along with other complaints from the general public, the Commission concluded that a public review of the Furnace Repair Plan and the Sands Inquiry Report should take place before the next heating season and issued Order No. G-39-93 setting down July 12, 1993 as the date for the public hearing. The Commission invited submissions presenting evidence on the Furnace Repair Plan and the Sands Inquiry Report; and
- H. The public hearing into the Furnace Repair Plan and the Sands Inquiry Report was held in Vancouver, B.C. commencing on July 12, 1993 and concluding on July 19, 1993; and
- I. The Commission has considered the matter and the evidence presented in these proceedings, all as set out in the Decision issued concurrently with this Order.

NOW THEREFORE the Commission orders as follows:

1. Order No. G-95-92 is hereby rescinded.
2. The BCGUL Furnace Repair Plan is to be discontinued on the expiry of existing contracts. Contracts for customers currently involved in the Furnace Repair Plan are to be honoured until the date of expiry of the one-year contract.
3. BCGUL is to provide customers who are currently involved in the Furnace Repair Plan with a list of alternative insurance plans prior to the expiry of the customer's contract.
4. Subject to the filing of a detailed application by BCGUL, the Commission is prepared to consider the amortization of costs incurred for the Furnace Repair Plan over an appropriate period of time.
6. BCGUL will comply with directions contained in the Commission Decision issued concurrently with this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of September, 1993.

BY ORDER



Lorna R. Barr
Deputy Chair
and Chair of the Division

Appearances

| | |
|-----------------------------------|--|
| G.A. FULTON, P. MILLER | Commission Counsel |
| S. RICHARDS, MS. J. CLASBY | BC Gas Utility Ltd. |
| C. REASONS | Consumers' Association B.C. Branch, Federated Anti-Poverty Groups, Senior Citizens Association of B.C. |
| G. MULLALY | International Brotherhood of Electrical Workers, Local 213 |
| A.W. CARPENTER | Gas Contractors Association of British Columbia |
| E. SARSFIELD | Himself |
| V. TRAYNOR | Mechanical Contractors Association |
| P. HOLBROOK | B.C. Furnace Service |
| MR. STIFFON | Himself |
| MR. BERG | Himself |
| BRIAN McDOUGALL | Himself |
| ALEX WIRSZILES | Himself |
| PETER DAVERN | Himself |
| STAN HUNTER | Himself |
| JOSEPH MAW | Himself |
| DONALD BRUCE FOWLER | Himself |
| BRIAN CAMPBELL ROBERT C. ALLEN | Witnesses for the IBEW |
| RAY PAQUET | Himself |
| KENNETH RONALD WILLIAM PEARCE | Himself and the Refrigeration and Air Conditioning Contractors Association |

Appearances
(Continued)

ARTHUR J. RICARD
HUGH LILLIE

Witnesses for Gas Contractors Association of B.C.

PAT HOLBROOK

Himself

NORMAN ADELMAN

Witness for Gas Contractors Association of B.C.

COMMISSION STAFF:
Paul H. Gronert

Manager, Petroleum Engineering

ALLWEST REPORTING LTD.

Court Reporters & Hearing Officer

APPENDIX B

List of Exhibits

| | Exhibit <u>No.</u> |
|---|-----------------------|
| Book Entitled "Commission Orders | 1 |
| Affidavit of Publication Containing Notice of Hearing | 2 |
| The Sands Inquiry | 3 |
| List of Authors of Letters Sent to Commission Responding to Order No. G-39-93 | 4 |
| Volume 1 of BCGUL Prepared Evidence | 5 |
| Volume 2 of BCGUL Prepared Evidence | 6 |
| BC Gas Answer to Information Request # 1 | 7 |
| Affidavit of Ronald Jupp | 8 |
| Additional Financial Disclosure | 9 |
| Direct Testimony of the Gas Contractors Association of British Columbia | 10 |
| Letter dated June 24, 1993 | 11 |
| Letter dated July 5, 1993 | 12 |
| Response to Information Request | 13 |
| Submission of Donald Bruce Fowler | 14 |
| Organization Chart of BC Gas Utility Ltd. Corporate Structure | 15 |
| Record of Failures of Heat Exchangers | 16 |
| Lower Mainland Tariff of BC Gas | 17 |
| Mr. Adelman's Direct Testimony | 18 |
| Answer to Information Request # 1 by the Gas Contractors Association of British Columbia | 19 |
| Appendix to Mr. Traynor's Written Evidence | 20 |
| Written Evidence of Dr. Allen and Dr. Campbell | 21 |
| Draft Brochure of BC Gas Utility Ltd. | 22 |
| Job Descriptions of Utilisation Technicians 1 and 2 | 23 |
| Customer Responses | 24 |
| Memo from Mr. Richards to Mr. Ellis | 25 |
| Map of Area Covered by the Furnace Repair Plan | 26 |
| Letter dated November 10, 1992 written by Mr. Mullaly | 27 |
| BC Gas Furnace Repair Plan Questionnaire | 28 |

**List of Exhibits
(Continued)**

| | Exhibit <u>No.</u> |
|---|-----------------------|
| Articles and Memorandum of BC Gas Utility Ltd. | 29 |
| Letter from Mr. and Mrs. Gosselin | 30 |
| Evidence of Mechanical Contractors Association | 31 |
| Letter dated October 31, 1988 and Attached Memorandum | 32 |
| Letter from Mr. R. Pellatt to Mr. D. Masuhara dated April 18, 1991 and attached Letter dated April 17, 1991 | 33 |
| Written Evidence of Gordon Latham | 34 |
| List of Questions | 35 |
| Alouette Heating and Sheet Metal Document | 36 |
| Best Electric Furnace Warranty Plans | 37 |
| 820 Responses to a Newspaper Ad | 38 |
| Group of Letters from Employees and Customers of Best Electric | 39 |
| Letter and Two Samples | 39A |
| Letter dated May 29, 1991 from the British Columbia Utilities Commission to the Mechanical Contractors Association | 40 |
| Letter from Mechanical Contractors Association of British Columbia to the British Columbia Utilities Commission and Acknowledgement of Receipt | 41 |
| Two Letters | 42 |
| Letter dated September 13, 1991 from John Sadler Mechanical Limited to the British Columbia Utilities Commission and Return Letter | 43 |
| Letter to File by R.J. Pellatt Dated September 13, 1991 | 44 |
| Copy of Brochure | 45 |
| Letter from Mr. Norman Swail to the British Columbia Utilities Commission | 46 |
| Letter from the New Jersey State Council of Electrical Contractors Association | 47 |
| Letter dated January 25, 1993 | 48 |
| Information Response Re: 1993 Corporate Sponsorships | 49 |
| Information Response Re: 1993 Corporate Advertising | 50 |



IN THE MATTER OF the Utilities Commission
Act, S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF an Application by
BC Gas Inc.

BEFORE: J.G. McIntyre,)
Chairman;)
J.D.V. Newlands,) June 6, 1991
Deputy Chairman;)
N. Martin,)
Commissioner; and)
W.M. Swanson, Q.C.,)
Commissioner)

O R D E R

WHEREAS:

- A. On October 23, 1990 BC Gas Inc. - Lower Mainland Division ("BC Gas") applied to the Commission for approval of amendments to its Gas Tariff, Terms and Conditions to allow for the promotion and operation of an insurance program for residential gas heating appliances; and
- B. On October 30, 1990 the Commission held a meeting with representatives from the Mechanical Contractors Association of British Columbia, Heating Refrigeration and Air Conditioning Institute, Refrigeration and Air Conditioning Contractors Association, the Sheet Metal Contractors Association of British Columbia and the Canadian Institute of Plumbing and Heating (collectively referred to as "the Association"). The concerns of the Association about the BC Gas Application were fully discussed at the meeting; and
- C. On December 6, 1990 BC Gas responded to a Commission Information Request and proposed a number of amendments to their Application referred to as the BC Gas Furnace Repair Plan ("the BC Gas Plan"); and
- D. On March 22, 1991 the Association provided the Commission with general information on its Gas Appliance Protection Plan of British Columbia for residential gas heating appliances ("the Association Plan"); and
- E. The Commission has reviewed the information filed and finds that approval of the BC Gas Plan is in the public interest, all of which is set out in Reasons for Decision attached as Appendix A to this Order.

NOW THEREFORE the Commission orders as follows:

- 1. The BC Gas Plan as filed on October 23, 1990, as amended December 6, 1990, is approved effective immediately.
- 2. BC Gas will, subject to timely filing, provide the Commission with amended Gas Tariff, Terms and Conditions consistent with this Order and Reasons for Decision.

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BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-47-91

2

3. The BC Gas Plan and supporting promotional material are to clearly identify the need for periodic inspections and the availability of the Association plan. BC Gas promotional brochures are to include an Association telephone number to assist customers in making comparisons.
4. Prior to informing the public, BC Gas will submit its promotional material to the Commission so that the Commission can confirm that the conditions in item 3 above have been adequately addressed.
5. BC Gas will provide the Commission with an Annual Report outlining all costs and revenues directly attributable to the BC Gas Plan including a full allocation of overheads. The first report should cover the period ending December 31, 1991.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of June, 1991.

BY ORDER


John G. McIntyre
Chairman



Attachment

REASONS FOR DECISION

BC GAS INC. FURNACE REPAIR PLAN

On October 23, 1990, BC Gas Inc. ("BC Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval to introduce a furnace insurance program for its Lower Mainland residential customers ("the BC Gas Plan"). The BC Gas Plan is based on replacement insurance (parts and labour) for certain heating appliance parts at an annual premium of \$59.00. This Application was preceded by six formal meetings and a number of informal discussions from May to October 1990, between BC Gas and Association representatives. These were held in an effort to secure Association cooperation and involvement in the BC Gas Plan. The Commission, through its staff, facilitated these discussions in the expectation that Association concerns could be addressed in BC Gas' application.

On October 30, 1990, the Commission met with the Association to hear their remaining concerns about the BC Gas Plan. At this meeting, the Association provided a written submission which concluded by asking the Commission to postpone examination of, or reject the BC Gas Application "*...and permit Industry to provide an insurance program that will be reasonably priced but which will recognize the primacy of safety and environmental needs of efficiency in the operation of heating equipment.*" The Commission considered this request and, after a number of communications with the Association, agreed that it could take until April 1, 1991 to develop its proposals. In the meantime, the Commission deferred a decision on the BC Gas Plan, recognizing that deferral would have the effect of delaying the availability of insurance to Lower Mainland gas heating customers for one year or until the 1991-92 heating season.

On March 22, 1991, the Association provided the Commission with general information on its newly developed insurance protection plan called the Gas Appliance Protection Plan of British Columbia ("the Association Plan"). During the period leading up to the submission of the Association Plan, the Association was active in seeking support for their concerns regarding the potential "monopoly competition" from BC Gas. The Commission received a number of letters from MLAs requesting the Commission to give the Association

every consideration. In addition, many individual submissions were received from gas contractors. The Commission therefore, has no doubt as to the widespread nature of the concerns. Throughout this extended process of review and consultation, the Commission has ensured that all submissions by the various interested parties were interchanged for comment.

The difficult determination for the Commission has been to anticipate the impact of utility vs Association programs and ensure that customer needs are met without causing unfair competition between the furnace repair trade and the utility. In this circumstance, if the Commission is to determine that a utility program is desirable as a service to customers, then the Commission must also consider control to ensure fair competition. The Commission has considered that these programs are a matter of improved quality of service and customer convenience, rather than a critical service. Therefore, the Commission places greater emphasis on insuring a stand-alone accounting of this program so that there is no cross-subsidy from customer gas rates.

In reviewing this matter, the Commission has focussed on the following key issues:

- Customer Needs
- Financial Impact
- Safety Considerations
- Monopoly Competition

Customer Needs

Independent customer surveys have been conducted by both BC Gas and the Association. The surveys demonstrate that customers are interested in protecting themselves against unexpected heating appliance expenses through the purchase of insurance. As expected, customer interest is price sensitive.

BC Gas, in fixing its proposed price at \$59.00, has surveyed utilities throughout Canada and the United States as to charges for comparable insurance plans. Existing prices fall

within a narrow band and are consistent with the customer survey results. Overall, the BC Gas Plan closely parallels the plan of Consumers Gas which has been in place for five years in the Province of Ontario.

The Association, in setting its package of prices (\$99.95 for most heating appliances), has given priority to a mandatory annual safety inspection charge component of \$59.95. Providing the customer's "natural gas heating equipment is up to industry standards", the customer would be eligible for a "Repair Insurance Agreement" at an additional cost of \$40.00 for a standard natural gas furnace (insurance for mid and high efficiency furnaces is priced at \$60.00 and \$80.00 respectively). Accordingly, the insurance is only available as part of a package price ranging from \$99.95 to \$139.95.

As indicated, the Association Plan requires a qualifying pre-inspection, whereas the BC Gas Plan requires a 15-day waiting period before coverage takes effect. In the case of the Association Plan, the customers must bear the costs of bringing their equipment "up to industry standards" before insurance will be provided.

Financial Impact

In approving the BC Gas Plan, the Commission recognizes that there could be the potential of cross-subsidy by other utility customers if the anticipated number of applications is not realized or the average cost of claims exceeds those forecast. In order to address this concern, the Commission will require an accounting of all costs and revenues attributable to the BC Gas Plan, including a full allocation of overheads. If there is an excess of costs over revenues, the Commission will carefully consider the reasons and may disallow such costs that should have been reasonably foreseen. This measure removes any potential for the utility to undertake predatory market pricing at the expense of private industry, and will protect other utility customers.

Safety Considerations

The Association has raised the concern that customers who subscribe to the BC Gas Plan may be lulled into a false sense of security regarding the safety of their equipment. It suggests the way to address this concern is to have mandatory annual inspections as an integral part of the insurance plan. While the Commission agrees that safety is a concern, it finds that there is little evidence to support the extent of the Association's position. Mandatory, annual, pre-qualification inspections are not essential to a parts insurance plan. The Association program deals with both inspection and insurance considerations. The BC Gas program provides only insurance. The Commission does not believe that these two considerations must necessarily be linked in the same program. The Commission has recognized the increasing complexity of newer high efficiency equipment, and ordered the gas utilities in the Province to initiate a customer awareness program to focus on the need for periodic inspections. Customers who wish to arrange for annual inspections may prefer the Association Plan, which provides lower priced insurance following an annual safety inspection. Depending upon the particular equipment and its age, a period of three to five years may be more in keeping with reliability concerns. In approving the BC Gas Plan, the Commission will ensure through its review, that the BC Gas promotional material clearly identifies the need for periodic inspections to maintain equipment in a reliable condition.

Monopoly Competition

In its submissions to the Commission, the Association has maintained that if BC Gas is permitted to compete with the Association in the provision of heating appliance insurance, it would be unfair monopoly competition.

The Commission, in deferring its decision on the BC Gas application to this date, encouraged the Association to develop alternatives to enable it to compete with the BC Gas Plan. The Association has now established its own plan and has structured a supporting organization - "The Gas Contractors Association of B.C." The Commission believes that the Association can now offer an alternative choice to BC Gas Lower Mainland customers

as well as a new service to other gas customers throughout B.C. The Commission does not believe however, that the presence of the Association Plan, as it is presently structured, renders the BC Gas Plan unnecessary or superfluous for the reasons discussed above.

The Commission, in approving the BC Gas Plan has attached a number of conditions intended to address the monopoly concern. These include pointing out the need for periodic inspections; the inclusion of an Association telephone number in the BC Gas promotional material to facilitate comparison shopping by customers; and finally as outlined under "Financial Impact", controls to ensure that BC Gas does not compete unfairly through subsidized pricing. Furthermore, the Commission will review this program on an ongoing basis to ensure that no implicit subsidy exists in the utility program. For example, the Commission will require the utility to account for the full costs of any bill stuffers, inclusive of full postage.



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| BRITISH COLUMBIA UTILITIES COMMISSION | |
| ORDER NUMBER | G-95-92 |

APPENDIX D

IN THE MATTER OF the Utilities Commission
Act, S.B.C. 1980, c. 60 as amended

and

IN THE MATTER OF an Application by
BC Gas Inc.

and

Commission Order No. G-49-92

| | | | |
|---------|---------------|---|-----------------|
| BEFORE: | M.K. Jaccard, |) | October 8, 1992 |
| | Chair; and |) | |
| | L.R. Barr, |) | |
| | Deputy Chair |) | |

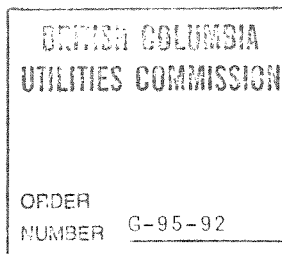
O R D E R

WHEREAS:

- A. The Commission, by Order No. G-47-91, gave conditional approval to the BC Gas Inc. Furnace Repair Plan ("the Plan") and issued "Reasons for Decision" attached to that Order; and
- B. On March 31, 1992 BC Gas filed its 1991 Annual Report on the performance and profitability of the Plan; and
- C. The Commission reviewed the 1991 Annual Report on the Plan and concluded that further evidence and review was required; and
- D. By Commission Order No. G-49-92 Ms. Elsie L. Sands was appointed to conduct an Inquiry on the Plan under specified terms of reference and to make a report; and
- E. On September 8, 1992 Ms. Sands filed a Report dated September 4, 1992 and following consideration the Commission accepted the Report and recommendations. The Executive Summary and detailed recommendations are attached as Appendix A to this Order.

NOW THEREFORE the Commission orders as follows:

1. BC Gas is instructed to comply with all of the recommendations of the Inquiry Officer's Report as detailed on pages 46-47 of the Report.
2. In winding-up the Plan, BC Gas is to cease enrolling new customers in the Plan effective with the date of this Order. Contracts for customers enrolled in the Plan prior to this date are to be honoured until expiry of the one-year term and terminated thereafter.



3. BC Gas is to provide customers, who have been enrolled in the Plan, with a list of alternative insurance plans prior to the termination date of the Plan.
4. In the event BC Gas chooses to operate a successor to the Plan through an affiliated company, an arms-length relationship will be expected in accordance with all of the recommendations of the Inquiry Officer's Report.
5. The Commission is prepared to approve the amortization of costs incurred for the Plan over an appropriate period subject to the filing of a suitably detailed application by BC Gas.

DATED at the City of Vancouver, in the Province of British Columbia, this 13 day of October, 1992.

BY ORDER

A handwritten signature in cursive script, appearing to read "Mark Jaccard".

Dr. Mark K. Jaccard
Chair

/mmc
Attach.

EXECUTIVE SUMMARY

This Report of Inquiry, delivered in compliance with British Columbia Utilities Commission Order G-49-92, addresses the issues set out in the Terms of Reference for the Inquiry. Those issues concern the BC Gas Furnace Repair Plan (the "Plan"), its subscribers and the effects, if any, that the Plan has on the gas industry.

BC Gas has a special position within the residential gas marketplace in British Columbia by virtue of its position as a monopolistic distributor of gas for residential use within its service area. Through its Furnace Repair Plan BC Gas has entered into direct competition with independent heating contractors in its Coastal Division service area for furnace repair business. Its status as a monopoly gas distributor gives it certain significant advantages over independent contractors in competing for that residential furnace repair business. There are no changes or adjustments to the Plan that will adequately address the concerns of all parties.

Based on findings made in the course of this Inquiry it is my recommendation that the Plan as it presently exists be wound up. Independent gas contractors have in the past and can now provide adequate gas furnace repairs to residents of the lower mainland of British Columbia. While BC Gas should not be prevented from competing with independent gas contractors for furnace repair business through a furnace insurance scheme, in order to ensure a level playing field it should be permitted to do so only through an affiliate that derives no advantage whatsoever from its association with BC Gas.

Accordingly, I recommend as follows:

1. That the BC Gas Furnace Repair Plan as it presently exists should be wound up in an orderly manner. BC Gas has the power under its agreement with subscribers to discontinue the Furnace Repair Plan at any time. In the event of cancellation of the program BC Gas' liability is restricted to a refund of the unexpired portion of the premium payment;
2. That in order to allow free and fair competition between BC Gas and independent gas furnace repair contractors for furnace insurance business, BC Gas should be permitted to operate a gas furnace insurance plan, if it chooses to do so, but only through an affiliate which is a completely stand alone entity that enjoys no advantage from any association it may have with BC Gas;
3. That the following conditions should apply to the relationship between BC Gas and any affiliate it forms to operate a gas furnace repair plan:
 - (a) The name of the affiliate should not resemble the name of BC Gas Inc. and the affiliate should not use any BC Gas trademark except on the same basis as use of the trademark may be generally available to independent contractors;
 - (b) Neither BC Gas nor the affiliate should trade upon or advertise their affiliated status;
 - (c) The affiliate should not have a place of business at or on premises owned or occupied by BC Gas. The affiliate should not share the use of premises, equipment, inventory, personnel or other resources of BC Gas;
 - (d) The affiliate should not advertise, promote or market its products or services through mailings of BC Gas or advertisements in which the name BC Gas appears;
 - (e) The affiliate should maintain accounts, books and records separate and distinct from those of BC Gas;

- (f) All transactions between BC Gas and the affiliate should be conducted on an "arms length" basis;
 - (g) BC Gas should not provide the affiliate with any data or information, including but not limited to customer lists, unless such information is transferred or charged to the affiliate at market value and is made available to third parties under the same terms and conditions that are available to the affiliate;
 - (h) The affiliate should not be so capitalized or financed as to derive an advantage from its association with BC Gas;
 - (i) BC Gas should not provide financial assistance to the affiliate either directly or indirectly;
 - (j) The affiliate should not be given any advantage in enrolling subscribers of the existing Plan.
4. If BC Gas forms an affiliate to sell furnace repair insurance, the relationship between BC Gas and the affiliate should be regulated by the British Columbia Utilities Commission.

Dated this 4th day of September, 1992.



Elsie L. Sands, Inquiry Officer under the
British Columbia Utilities Commission Act