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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-95-07

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

**and**

**A Complaint by Energy Savings (B.C.) Limited Partnership  
of a Breach of the Code of Conduct for Gas Marketers  
by Wholesale Energy Group Ltd.**

**BEFORE:** L.F. Kelsey, Commissioner August 14, 2007  
A.W.K. Anderson, Commissioner

**O R D E R**

**WHEREAS:**

- A. By letter dated June 20, 2007, Energy Savings (B.C.) Limited Partnership ("ESBC") filed a formal complaint that Wholesale Energy Group Ltd. ("Wholesale Energy") induced existing ESBC customers to break their contracts, and requested that the Commission take action on the matter on the basis that Wholesale Energy had breached the Code of Conduct for Gas Marketers (the "Code"); and
- B. The Code was initially approved by Order No. G-90-03, and was most recently revised by Order No. G-45-07 dated April 20, 2007; and
- C. The Commission by Order No. G-90-03 approved Rules for Gas Marketers (the "Rules"). Rule 10 provides for the enforcement of the Rules and the Code and Licence conditions; and
- D. Commission Order No. A-10-07 dated April 27, 2007, granted Wholesale Energy a Gas Marketer Licence, subject to several conditions, which include that Wholesale Energy will comply with the Code; and
- E. By Letter No. L-53-07 dated June 21, 2007, the Commission established a written hearing and Regulatory Timetable for the resolution of the ESBC complaint against Wholesale Energy; and
- F. By letter dated June 28, 2007, ESBC filed its Written Submission; and
- G. By letter dated July 9, 2007, Wholesale Energy filed its Written Submission; and
- H. By letter dated July 13, 2007, ESBC filed its Reply Submission; and
- I. The Commission has considered the submissions and finds that Wholesale Energy failed to comply with the Code, which is a condition of its Gas Marketer Licence, with respect to three incidents, for the Reasons for Decision that are attached as Appendix A to this Order.

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**NOW THEREFORE**, pursuant to Section 71.1 of the Utility Commission Act and the Rules for Gas Marketers, the Commission orders as follows:

1. Within 30 days of the date of this Order, Wholesale Energy will pay to the Commission a financial penalty of \$1,000.00 for each of the three breaches of the Code, for a total penalty pursuant to this Order of \$3,000.00, with respect to the ESBC complaint.
2. Wholesale Energy will provide a copy of the Code to each Salesperson by the end of August, and each Salesperson will sign a certification acknowledging receipt of the Code.
3. Wholesale Energy will have its supervisory staff provide monthly retraining to each of its Salespersons in August, September, October and November 2007. The retraining may be conducted individually or in group sessions, will be done in person, and will emphasize the requirement for a Salesperson to comply in spirit as well as to the letter with all obligations of the Code. By the end of the September 2007 retraining, each Salesperson shall have received a detailed review and explanation of the requirements of the Code.
4. Wholesale Energy will provide training to each new Salesperson prior to the Salesperson contacting Consumers, and the training will include a detailed review and explanation of the requirements of the Code.
5. After each training or retraining session, Wholesale Energy will have each Salesperson sign a certification that they have been instructed and will comply with the Code. Certifications will be provided to the Commission on request.
6. Within 15 days after the end of August, September, October, November and December 2007, Wholesale Energy will file a report with the Commission stating the number of Salespersons trained and retrained during the previous month, confirming that all Salespersons were trained or retrained, and providing a summary of the topics covered and a copy of any handout material for the retraining that month.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 14<sup>th</sup> day of August 2007.

**BY ORDER**

*Original signed by*

L.F. Kelsey  
Commissioner

Attachment

**A COMPLAINT BY ENERGY SAVINGS (B.C.) LIMITED PARTNERSHIP  
OF A BREACH OF THE CODE OF CONDUCT FOR GAS MARKETERS  
BY WHOLESALE ENERGY GROUP LTD.**

**REASONS FOR DECISION**

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**1.0 INTRODUCTION**

By letter dated June 20, 2007 Energy Savings (B.C.) Limited Partnership (“ESBC”) complained that Wholesale Energy Group Ltd. (“Wholesale Energy”) induced existing ESBC customers to break their contracts, and requested that the Commission take action on the basis that Wholesale Energy violated the Code of Conduct for Gas Marketers (the “Code”) .

Commission Letter No. L-53-07 established a written hearing to resolve the matter. The regulatory process, as well as background on the Code and the Rules for Gas Marketers (the “Rules”), are set out in the Order that accompanies these Reasons for Decision.

Order No. A-10-07 granted Wholesale Energy a Gas Marketer Licence. In its application for a licence, Wholesale Energy agreed to accept the obligations of the Code, and compliance with the Code is a condition of its licence. Article 20 of the Code states:

“A Salesperson shall not induce any Consumer to breach a contract with another Gas Marketer.”

Rule 10 of the Rules addresses the enforcement of the Rules, the Code and Licence conditions as follows:

“If the Commission finds, after notice and opportunity for the Gas Marketer to be heard in an oral or written hearing, that a Gas Marketer has failed to comply with the Act, the Rules, the Code of Conduct for Gas Marketers or conditions in its Gas Marketer Licence, and in addition to any other remedies or actions that may be applied, the Commission may:

- a. Suspend or cancel the Gas Marketer Licence.
- b. Amend the terms and conditions of, or impose new terms and conditions on the Gas Marketer Licence until the deficiencies are resolved.
- c. Apply penalties pursuant to Section 106(4) and (5) of the Act not to exceed \$10,000 for each day for each day such violation continues.

- d. Order that a portion or all of the performance security (referred to in Rule 9.0) be paid out to consumers, public utilities or other persons that the Commission considers to have been harmed by an act or omission of the Gas Marketer including a breach of the Act, the Rules, the Code of Conduct for Gas Marketers, or conditions of the Gas Marketer Licence.”

## **2.0 SUBMISSIONS OF THE PARTIES**

ESBC provided records of three inbound calls to its customer service centre, as evidence that Wholesale Energy agents (Salespersons) induced ESBC customers to break existing contracts. ESBC submitted that in two cases the Salespersons encouraged the customer to believe that they represented ESBC, and expressed concern that the behaviour of the Salesperson was inappropriate and aggressive. In ESBC’s view, the three incidents are indications of a more systemic issue whereby Wholesale Energy Salespersons have been directed to sell in this manner.

To ensure compliance with the Code and other licence requirements, ESBC requests that the Commission suspend Wholesale’s licence for one week, require it to retrain all Salespersons, and levy a fine of \$10,000.

Wholesale Energy submitted that when ESBC notified it of these incidents, it immediately investigated and terminated the employment of the two Salespersons involved in two of the incidents. There was not enough information to identify the Salesperson involved in the third incident, but Wholesale Energy believes this Salesperson was one of the two who were terminated. Wholesale Energy also brought all its Salespersons into the office for retraining with respect to adherence to the Code and the action that it would take with regard to breaches of the Code.

Wholesale Energy opposes the imposition of sanctions in what it submits is an isolated complaint of behaviour that it does not support, and which it has taken subsequent action to prevent. Wholesale Energy states that it will continue to stress compliance with the Code in its ongoing training sessions and provides assurance that breaches will not be condoned or tolerated.

In its Reply Submission, ESBC states that it is heartened to learn of Wholesale Energy’s actions to date and documented commitment to complying with the Code.

### 3.0 COMMISSION DETERMINATION

In resolving the ESBC complaint, the Commission will consider the matter in two steps. First, were activities of Wholesale Energy in breach of the Code? Second, if it was in breach of the Code, what consequences, if any, should be imposed on Wholesale Energy?

The evidence of ESBC indicates three incidents where Salespersons of Wholesale Energy induced ESBC customers to cancel their contracts with ESBC. Wholesale Energy did not refute this evidence. After investigating the three incidents, Wholesale Energy terminated the Salespersons involved in the two incidents where it was able to identify the Salespersons. **The Commission finds that Wholesale Energy failed to comply with the Code, which is a condition of its Gas Marketer Licence, with respect to each of the three incidents that are the subject of the ESBC complaint.**

The Commission considers these breaches of the Code to be a very serious matter. The Commission is also concerned by the suggestion of aggressive behaviour by Salespersons. Strict compliance to the spirit as well as the letter of the Code is necessary so that consumers and Gas Marketers have confidence in the arrangements for the unbundling of the residential gas market in British Columbia, and will continue to support unbundling.

Nevertheless, where the Salespersons could be identified, Wholesale Energy dealt with incidents in a prompt and decisive manner. Wholesale Energy also initiated a retraining program for all of its Salespersons. There is no evidence to support the contention of ESBC that Wholesale Energy directed its Salespersons to sell in the manner that led to the complaint. Moreover, Wholesale Energy makes no attempt to avoid its responsibility for the actions of its Salespersons.

In this circumstance, the Commission considers that it would not be appropriate to suspend the Gas Marketer Licence of Wholesale Energy, or to levy a maximum financial penalty against it. **In these specific circumstances, the Commission determines that it will not suspend or cancel Wholesale Energy's Gas Marketer Licence.**

However, the Commission concludes that this serious failure of Wholesale Energy to comply with the Code requires a certain amount of financial penalty. Also, the Commission remains concerned that the three incidents may be indicative of deficiencies in the training and supervision that Wholesale Energy provides to its Salespersons. Ongoing training sessions in direct contact with supervisory staff will help to keep Salespersons aware and fully conscious of their obligations under the Code, and the need for them to treat consumers with

consideration and respect. **The Commission directs Wholesale Energy to pay to the Commission, within 30 days of the date of this Order, a financial penalty of \$1,000.00 for each of the three breaches of the Code, for a total penalty pursuant to this Order of \$3,000.00, with respect to the ESBC complaint. Also, the Commission directs Wholesale Energy to provide retraining to all its Salespersons on a monthly basis in August, September, October and November 2007, to provide training to all newly hired Salespersons, and to provide a report to the Commission on this training and retraining, as set out in the Order that accompanies these Reasons for Decision.**