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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-161-07

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

and

**Smart Energy Corporation
Breach of the Code of Conduct for Gas Marketers
Third Party Verification Compliance**

BEFORE: L.F. Kelsey, Commissioner December 18, 2007

O R D E R

WHEREAS:

- A. By Order No. G-73-07 the Commission ordered that a Third Party Verification ("TPV") call will be mandatory for all door to door sales to residential customers effective July 1, 2007. The TPV will be a telephone call conducted with the customer who signed the contract using a digital recorded voice call and the call will be maintained by the marketer for the term of the contract. It should be available three days after the initial recording if requested by the Commission; and
- B. Upon reviewing contract disputes of Smart Energy Corporation ("Smart Energy"), Dispute Numbers 7131, 7152, 7153, 7192, and 7199, the Commission noted that Smart Energy had not uploaded a recorded TPV call for Commission review in adjudicating the aforementioned disputes; and
- C. By Letter dated November 1, 2007, the Commission requested that Smart Energy provide the TPV calls for the above-noted disputes. The Commission requested that the disputes be provided on or before November 5, 2007; and
- D. On November 6, 2007 by email, Smart Energy advised the Commission that due to system upgrades, Smart Energy was unable to retrieve some of the data. Smart Energy did not provide the requested TPV recordings; and
- E. By Letter dated November 6, 2007, the Commission advised Smart Energy that if the TPV calls are not accessible, the lack of satisfactory TPV compliance is in violation of the Code of Conduct, and the Commission may find it necessary to condition Smart Energy's Gas Marketing Licence to prohibit further solicitation in the marketplace until the deficiency is remedied; and
- F. The Commission requested the TPV recordings for the above-noted disputes as well as the last 20 recordings for which contracts had been submitted to Terasen Gas up to November 5, 2007 at 11:00 a.m. to be provided to the Commission to prove compliance before end of business day November 7, 2007; and
- G. On November 7, 2007 the Commission received a fax from Mr. Stephen A. Mellows, Barrister and Solicitor, retained as counsel by Smart Energy with respect to the requests made by the Commission for Smart

Energy's TPV recordings. Mr. Mellows requested an extension for the recordings to be provided to the Commission before close of business on November 9, 2007; and

- H. The Commission gave verbal confirmation to Mr. Mellows on November 7, 2007 that the deadline would be accepted by the Commission; and
- I. By Letter dated November 9, 2007 the Commission confirmed the deadline at close of business on November 9, 2007 for Smart Energy to provide the total of 25 noted TPV recordings to the Commission to prove compliance with the Order No. G-73-07; and
- J. By email dated November 9, 2007 from Smart Energy, the Commission received notice that all 25 TPV recordings could not be provided to the Commission upon request, and 10 TPV recordings were provided by email on November 9, 2007. Smart Energy noted that the remaining 15 TPV calls have been recorded but are not available for timely retrieval; and
- K. Commission Order No. G-140-07 dated November 15, 2007 prohibited Smart Energy from signing additional customers to sales contracts under the Residential Commodity Unbundling Program until Smart Energy could demonstrate to the satisfaction of the Commission that it could provide digitally recorded TPV calls to comply with Order No. G-73-07; and
- L. On November 21, 2007 Smart Energy provided the Commission with a report which outlined the remedy that would allow Smart Energy to provide TPV calls within three days of recording in compliance with Order No. G-73-07, a memo to its sales agents confirming new procedures, and a TPV script; and
- M. The Commission reviewed the TPV script and found that it did not comply with Order No. G-73-07; and
- N. On November 27, 2007 Smart Energy provided the Commission with a revised TPV script; and
- O. By Commission Order No. G-144-07, the Commission permitted Smart Energy to sign customers to sales contracts under the Residential Commodity Unbundling Program provided that Smart Energy files, until further notice from the Commission, copies of all contracts submitted to Terasen Gas Inc. for registration in the Residential Commodity Unbundling Program, accompanied by a TPV recording for each contract, within three days of the date the contract is submitted; and
- P. By email dated December 12, 2007, the Commission received from Terasen Gas Inc. a list of Smart Energy's enrollments for December 7, 2007; and
- Q. Smart Energy provided by mail on December 7, 2007 to the Commission copies of contracts and respective TPV recordings for five of the ten enrollments submitted to Terasen Gas Inc. on December 7, 2007; and
- R. By letter dated December 13, 2007, the Commission noted Smart Energy's apparent non-compliance with Commission Order No. G-144-07 and requested copies of the remaining five contracts and respective TPV recordings, along with Smart Energy's comments on the apparent non-compliance with Commission Order No. G-144-07, before end of business day December 14, 2007; and

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- S. The Commission has not received the contracts or respective TPV recordings for the remaining five enrollments submitted to Terasen Gas Inc. on December 7, 2007, or comments from Smart Energy regarding the apparent non-compliance; and
- T. The Commission finds that Smart Energy has not been in compliance with Commission Order No. G-144-07, and further, Smart Energy is not in compliance with Commission Order No. G-73-07.

NOW THEREFORE pursuant to section 71.1 of the Utilities Commission Act and the Code of Conduct and Rules for Gas Marketers, the Commission orders that:

- 1. Effective at the close of business this date and until further notice by the Commission, Smart Energy is prohibited from signing additional customers to sales contracts under the Residential Commodity Unbundling Program.
- 2. Smart Energy is to provide a filing to the Commission, before January 4, 2007, to show cause as to why Smart Energy's Gas Marketer Licence should not be amended to be limited to the supply of current customers ("Filing").
- 3. The Filing will include but not be limited to, evidence demonstrating Smart Energy's compliance with all license provisions, as noted in Commission Order No. A-21-07, since the date issued, save and except for the non-compliance noted in Commission Order No. G-140-07, and Smart Energy's current compliance including all directions in Commission Order No. G-144-07 and the matter referenced in the Commission's December 13, 2007 letter to Smart Energy.
- 4. Smart Energy should, in the Filing, address procedural matters that the Commission may consider should it decide to convene a hearing into this matter, which will include but may not be limited to, a procedural timetable, the type of hearing recommended, and other matters that may assist the Commission to efficiently review the Filing.
- 5. Smart Energy is to cease enrollment of residential customers with Terasen Gas Inc. effective December 19, 2007, and cease all marketing activity in any form under the Residential Commodity Unbundling Program, effective immediately and until further notice of the Commission.

DATED at the City of Vancouver, in the Province of British Columbia, this 18th day of December 2007.

BY ORDER

Original signed by

L. F. Kelsey
Commissioner