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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-140-07

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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: R. H. Hobbs, Chair November 15, 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 BCUC; and
- B. Upon reviewing contract disputes of 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. By letter dated November 6, 2007, the Commission requested the TPV recordings for the above-noted disputes as well as the last 20 recordings in which contracts had been submitted to Terasen Gas up to November 5, 2007 at 11:00 am 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

**BRITISH COLUMBIA
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2

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. The Commission has considered the submissions from Smart Energy and counsel, Mr. Mellows; and
- L. The Commission finds that Smart Energy is unable to comply with Commission Order No. G-73-07.

NOW THEREFORE pursuant to section 71(1) of the Utilities Commission Act and the Rules for Gas Marketers, the Commission orders, effective immediately and until Smart Energy has demonstrated to the satisfaction of the Commission that it can provide digitally recorded Third Party Verification calls to comply with Order No. G-73-07, that Smart Energy is prohibited from signing additional customers to sales contracts under the Residential Commodity Unbundling Program.

DATED at the City of Vancouver, in the Province of British Columbia, this 15th day of November 2007.

BY ORDER

Original signed by

Robert H. Hobbs
Chair

Attachment