



LETTER NO. L-11-08

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Log No. 24703

VIA E-MAIL

tom@accessgas.com

March 31, 2008

Mr. Tom Dixon
Vice President
Access Gas Services Inc.
Suite #1 – 730 Eaton Way
Annacis Business Park
Delta, B.C. V3M 6J9

Dear Mr. Dixon:

Re: Access Gas Services Inc.
Request for Reconsideration of Commission Order No. G-46-08

Following a customer complaint and subsequent written hearing, the BC Utilities Commission ("Commission") found that Access Gas Services Inc. ("Access Gas", "AGS") had violated Articles 9, 15 and 16 of the Code of Conduct for Gas Marketers ("Code of Conduct"). As a result of this finding, the Commission, ordered certain sanctions and undertakings of Access Gas as outlined in Commission Order No. G-46-08.

By letter dated March 19, 2008, Access Gas requested a reconsideration of the Commission Decision. Access Gas provided five reasons for its request. The fifth reason summarized Access Gas' position: "There is no evidence of a breach of the Code of Conduct aside from the written letter of Juan who was not present during the sales presentation and is thus hearsay. AGS is extremely confident in Alicia's statements and the evidence firmly supports her position".

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission. The first phase, therefore, is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

The Commission then issues an order which invites registered intervenors and interested parties to comment on the application for reconsideration by addressing those questions set out in the order. The order also specifies the process to be followed which is either by written submissions and reply by the applicant or by written submissions and oral argument.

After the first phase evidence has been received, the Commission generally applies the following criteria to

determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

In addition, the Commission will exercise its discretion to reconsider, in other situations, wherever it deems there to be just cause.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

- the claim of error is substantiated on a prima facie basis; and
- the error has significant material implications.

If necessary, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application. The applicant and the intervenors may appear before the Commission at this stage to argue why the original decision should or should not be varied or overturned. Finally, after considering these arguments, the Commission renders its decision on the reconsideration application.

The Commission considers the letter from Access Gas requesting reconsideration as the prima facie first phase evidence. The Commission now considers whether or not a reasonable basis exists for allowing a reconsideration and applies the criteria described above:

The Commission is of the view that the only criteria that may have a bearing here is whether or not there has been a fundamental change in circumstances or facts since the Commission Decision. The reconsideration request provides evidence or facts that were not before the Commission at the time the decision was made.

The record shows that following receipt of a complaint email dated February 19, 2008, the Commission wrote on February 21, 2008 to Access Gas advising Access Gas of the complaint and enclosing a copy of the complaint. The Commission identified two Articles of the Code of Conduct which seemed to the Commission to relate to the complaint. The Commission advised Access Gas that it had "...initiated a written hearing into this matter, and offers Access Gas an opportunity to comment on the customer complaint, specifically as the alleged behaviour relates to the Code of Conduct". The Commission requested a response to the Commission and customer before March 6, 2008.

By letter dated February 25, 2008 Access Gas, by attachment, provided the Commission a copy of the response sent to the customer. This was the only communication received by the Commission from Access Gas in response to the Commission's letter of February 21, 2008.

In the above mentioned letter of February 25, 2008, Access Gas apologized to the customer for any inconvenience this matter may have caused, and also outlined how this matter was addressed with the salesperson, whom Access Gas refers to as an "independent representative".

Having advised Access Gas of the initiation of a written hearing and provided Access Gas the opportunity to comment on the customer complaint, specifically as the alleged behaviour relates to the Code of Conduct, the Commission accepted the submission by Access Gas, considered the evidence and issued its Decision.

In the reconsideration request, Access Gas states, among other things, that the salesperson “adamantly denies the allegations made” in the complaint letter. Access Gas states that the author of the complaint letter “was not present” during the salesperson’s visit to the residence contrary to what the complaint letter implies, and that the salesperson spent time in the customer’s home explaining the Customer Choice Program.

The Commission notes that none of this evidence was submitted by Access Gas when it was advised of the written hearing on February 21, 2008, and given the opportunity to comment. The Commission is of the view that the facts provided by Access Gas in its reconsideration request do not meet the criteria of “a fundamental change in circumstances or facts since the Decision” as the facts provided in the request were known, or should have been known to Access Gas when it was given the opportunity to comment during the written hearing, and before the Commission made its Decision.

The Commission denies Access Gas’ request for reconsideration of the decision in Commission Order No. G-46-08.

Yours truly,

Original signed by:

Erica Hamilton

EHM/dg