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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** A-32-12A

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

and

**Active Energy Corp. – Compliance Inquiry
Customer Choice Program**

BEFORE: L.F. Kelsey, Commissioner
D.A. Cote, Commissioner
A.A. Rhodes, Commissioner

December 3, 2012

O R D E R

WHEREAS:

- A. On March 8, 2012, the British Columbia Utilities Commission (Commission) issued Order A-5-12 establishing a Compliance Inquiry into 24 customer disputes against Active Renewable Marketing Ltd. (Active Energy). The Compliance Inquiry was established to investigate disputes alleging unauthorized signatures, and the steps taken by Active Energy to deal with these allegations;
- B. On October 18, 2012, Active Energy and the Commission's Compliance Team suggested they would work towards a proposal to:
 - a. Resolve the 24 customer disputes, as well as similar complaints received following the issuance of Order A-5-12;
 - b. Develop a comprehensive report to the Commission to identify all the complaints received and the steps taken to investigate and resolve the complaints;
 - c. Develop a protocol to review the contract activity from the same contract transaction period from which the complaints arose to identify any remaining concerns and to resolve any future complaints relating to allegations of fraud or unauthorized signatures that may arise;
- C. The Commission approved the suggested approach on October 31, 2012 by Order A-30-12, and asked the parties to report back on their work by November 13, 2012;
- D. By letter dated November 13, 2012, Active Energy advised that a Proposed Settlement Agreement (PSA) had been reached with the Compliance Team but, due to the volume of the material to be filed, delivery of the agreement to the Commission would not occur until November 15, 2012;
- E. On November 15, 2012, Active Energy and the Compliance Team submitted the PSA addressing the items above and advised that they could be available for an oral hearing on December 11, 2012, or such other time as is agreeable to the Commission;
- F. The Commission has reviewed the PSA as filed and is not persuaded that approval of the PSA is in the public interest.

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NOW THEREFORE the Commission orders as follows:

1. The Commission Panel is unable to accept the PSA as filed for the Reasons outlined in Appendix A to this Order.
2. The Commission encourages Active Energy and the Compliance Team to consider the Commission Panel's suggested modifications to the PSA outlined in the Reasons.
3. If Active Energy and the Compliance Team fail to file a modified PSA addressing the Panel's concerns by Friday, December 7, 2012, the Compliance Inquiry will resume in the form of an Oral Hearing on December 11, 2012. Detail on further process is provided in Appendix A.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of December 2012.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment

Active Energy Corp. – Compliance Inquiry

REASONS FOR DECISION

The Proposed Settlement Agreement

The Proposed Settlement Agreement (PSA) states that it provides for:

1. Completion of a proper record for the Order A-5-12 Compliance Inquiry;
2. The resolution of all complaints identified in Order A-5-12;
3. Completion of a proper record for all forgery and unauthorized signature complaints after February 28, 2012 and a resolution or proposed action for each of those complaints;
4. A process to determine the extent of forgery and unauthorized signature issues arising from Active Energy agreements with commercial customers signed before September 1, 2010 (with a focus on contracts where the gas is not flowing until November 1, 2012 or later), and a new protocol to deal with similar future complaints;
5. Sanctions against Active Energy. (Exhibit B-9, p. 1)

The PSA also states that it “represents a careful balance of interests and must be considered as a package agreement. Any changes to the PSA will therefore nullify the PSA.” (Exhibit B-9, p. 9)

The Commission Panel’s reasons for not accepting the PSA in its current form

It is the Panel’s view that the PSA does not provide an adequate evidentiary basis to determine if the proposed resolutions of individual complaints that led to the establishment of the Inquiry by Order A-5-12, or similar complaints received since that time, are appropriate. The PSA frequently concludes that complaints are “resolved” or “resolved – case closed” on the basis that the customer has not recently contacted Active Energy regarding reimbursement.

While this conclusion may be appropriate in some complaints, the Panel is not persuaded that this conclusion is warranted in each complaint. The Panel is concerned that the reason the customer has not been in recent communication with Active Energy could be because the customer believes its complaint is being considered by the Commission, either in this Inquiry or some subsequent process that the Commission will institute.

Further, the Panel is concerned that the PSA appears to characterize some complaints as being resolved on the basis that the agreement was cancelled at some point. However, there is no basis in some complaints for the Panel to conclude that the customer is satisfied with cancellation on a go forward basis and is not seeking a reimbursement of some portion of the costs incurred to the date of cancellation. Therefore, in the Panel’s view, the issue of whether reimbursement is sought by the customer, available to it or warranted remains outstanding in a number of cases.

In reviewing the PSA, the Panel finds that some proposed complaint resolutions require the collection of further information from customers. With some complaints, the PSA does not incorporate any information from the customer such as the customer’s account of events or whether the proposed resolution or next steps are satisfactory to the customer. The Panel cannot determine whether a proposed resolution is appropriate without a proper evidentiary basis.

The Panel notes that some disputed agreements are acknowledged to be non-compliant with the Code of Conduct; however, there is no readily apparent explanation in the PSA as to how the non-compliance was considered in the proposed resolution of the dispute.

In light of the deficiencies in the evidentiary record contained in the PSA, the Panel cannot reasonably determine whether the proposed sanctions against Active Energy are appropriate. This is of particular concern to the Panel as both Active Energy and the Compliance Team acknowledge that Active Energy did not fully comply with Order A-33-10, which was established to remedy similar complaints. The Panel is unable to comment further on the proposed sanctions until the deficiencies in the PSA are addressed.

The Commission Panel must base its decision on the evidentiary record before it. In the filing provided, Active and the Compliance Team have not provided sufficient information to persuade the Commission Panel that approval of the PSA is warranted, or in the public interest.

Suggested Revisions to the Proposed Settlement Agreement

The Commission Panel does not accept the PSA in its current form for reasons outlined above. However, the Commission Panel encourages Active Energy and the Compliance Team to consider the Commission Panel's modification of the PSA as outlined below. An agreement that sufficiently addresses the Panel's concerns will expedite this Compliance Inquiry process and save all affected parties the time and expense to deal with the issues at hand.

1. The PSA must include an agreed set of facts for each customer (supported by evidence) with a conclusion on the following:
 - a. Whether the agreement was signed by an authorized signatory;
 - b. Whether the agreement is otherwise fully compliant with the Code of Conduct for Gas Marketers; and
 - c. Whether the agreement is otherwise valid.

The information in the agreed set of facts regarding individual disputes will be made available to the respective customer.

2. The PSA must include the following evidence for each customer included in the current PSA:
 - a. A copy of the signed agreement;
 - b. A copy of the signed Notice of Appointment of Marketer;
 - c. The nature of the dispute;
 - d. The date on which the dispute was filed;
 - e. The flow start date and the number of months the gas flowed under the agreement;
 - f. The effective date the agreement was cancelled (if applicable);
 - g. A completed signature package and/or 2 copies of government issued identification from the alleged signatory;
 - h. Copies of all communications between the customer and Active Energy regarding the agreement and the dispute (e.g. welcome call, emails, etc.);
 - i. Record of employment (where applicable);
 - j. Details of reimbursement (amount issued, calculation details, full and final release), if applicable; and

k. The Commission's response/involvement to date.

3. Where Active Energy and the Compliance Team agree to a set of facts for a particular complaint, the Compliance Team must notify the customer of the finding, and include the customer's response (i.e. acceptance or rejection, and any further evidence the customer wishes to submit) on the finding. The Panel will then adjudicate the dispute. Where Active Energy and the Compliance Team cannot agree to a set of facts for a particular dispute, the Panel will make the finding and adjudicate the dispute.
4. Active Energy must notify all customers identified in the PSA who did not file a dispute with the Commission of the Commission's Customer Choice Dispute Process within two weeks of the date of this Order. Should the customer choose to file a dispute with the Commission, the Commission will handle the dispute through the regular process.

Further process if PSA is not modified

If Active Energy and the Compliance Team are unable to reach agreement on re-filing a modified PSA incorporating the Commission Panel's suggested modifications as outlined above, the Panel will resume the Inquiry proceeding on December 11, 2012. At that time, the Panel expects the parties to:

- Proceed with their submissions on Active Energy's application to expunge the Consumer Protection BC Report;
- Address the appropriate steps to secure a proper evidentiary record for the Inquiry as presently scoped or as it may be scoped (including the possible use of some of the material contained in the appendices to the PSA);
- Proceed with submissions on the appropriate process to follow to complete the Inquiry;
- Address which complaints should be included in the Inquiry;
- Address the involvement of the customers in the Inquiry;
- Address the inclusion of interveners in the Inquiry; and
- Suggest timelines for further process.

Should the Commission Panel decide to expunge the Consumer Protection BC Report in whole or in part, or if the Inquiry is expanded to include more complaints, the Panel will then determine an appropriate process to secure a proper evidentiary record to allow for an adjudication of the disputes.