



SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC V6Z 2N3 CANADA
web site: <http://www.bcuc.com>

BRITISH COLUMBIA UTILITIES COMMISSION	
ORDER NUMBER	A-20-12

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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 October 5, 2012
A.A. Rhodes, Commissioner

ORDER

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 Inquiry was established to investigate the disputes alleging forgery or unauthorized signatures, and the steps taken by Active Energy in dealing with these allegations. The Business Practices and Consumer Protection Authority (Consumer Protection BC) was retained to complete an Inquiry report (Report);
- B. Upon receipt and review of the Report, on August 27, 2012, Active Energy filed an Application to expunge the report prepared by Consumer Protection BC and as a result, the Commission issued Order A-14-12 establishing a regulatory timetable to hear submissions on this Application;
- C. Upon receipt of Active Energy's Application to have the Report expunged from the evidentiary record, the Commission marked the Report and Active Energy's Application as confidential;
- D. On September 12, 2012 the Commission notified all parties that it had set up a Compliance Team representing the Performance Monitoring, Conduct and Compliance Division of the British Columbia Utilities Commission that will maintain strict separation from the Commission Panel and the legal counsel and staff assisting the Commission Panel;
- E. On September 20, 2012, the Commission sought written submissions on whether the Report and Application should be held confidential pending a decision on Active Energy's Application;
- F. On September 21, 2012, Active Energy filed its submission requesting that the Commission hold the Report and Application confidential pending a decision on its Application;

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** A-20-12

2

- F. On September 26, 2012, the Compliance Team filed its submission stating that it does not object to Active Energy's request to hold the Report and Application confidential pending a decision on Active Energy's Application.

NOW THEREFORE the Commission orders as follows:

1. The Report and Active Energy's Application will be held confidential pending the Oral Hearing on Active Energy's Application for the reasons attached as Appendix A to this Order.
2. The Oral Argument scheduled for October 18, 2012, on Active Energy's Application, will not be open to the public.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of October 2012.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment

Active Energy Corp. – Compliance Inquiry
Customer Choice Program

REASONS FOR DECISION

1.0 ACTIVE ENERGY SUBMISSION

On September 21, 2012, Active Energy filed a submission requesting that the Commission hold the Report and Application confidential pending a decision on Active Energy's Application to have the Report expunged from the record for the following reasons: (a) freedom of information legislation does not compel disclosure, (b) the Report is prejudicial and inflammatory, and (c) in any event, given the nature of the Application, and the fact that it is to be heard at an Oral Hearing scheduled for October 2012, there is no compelling reason for the Report to be made public before the Application is determined on its merits.

2.0 COMPLIANCE TEAM SUBMISSION

On September 26, 2012, the Compliance Team filed a submission which states the Compliance Team does not object to Active Energy's request to hold the Report and Application confidential pending a decision on Active Energy's Application.

The Compliance Team concluded: "These obligations require the Commission to balance the public interest in a transparent and public process against the potential harm to Active from disclosing the Report. Releasing the report at this stage may circumvent this process – once released Active could be harmed even if the Commission rules that the Report is inadmissible. Conversely, there is little prejudice if the Report is not released until after a positive Commission admissibility ruling." (Exhibit A3-2, p. 1)

3.0 COMMISSION DETERMINATION

The Report and Active's Application will be held confidential pending the Oral Hearing on Active's Application to have the Report expunged from the record for the reasons following.

The Commission Panel recognizes that there is a potential that Active Energy could be harmed if the Report is released. There is little prejudice in delaying public disclosure until the determination is made by the Panel. Given that the subject of the Oral Hearing scheduled for October 18, 2012 is whether or not the Report should be expunged, the Commission Panel finds it reasonable to hold the Report confidential until a decision is made on whether the Report is to remain on the record of this Proceeding.