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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER A-6-12**

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

and

Smart Energy (BC) Ltd. – Compliance Inquiry  
Customer Choice Program

**BEFORE:** L.F. Kelsey, Commissioner

March 12, 2012

#### **O R D E R**

#### **WHEREAS:**

- A. By Order C-6-06 dated August 14, 2006, the British Columbia Utilities Commission (Commission) granted a Certificate of Public Convenience and Necessity for the Residential Commodity Unbundling Project for residential customers in all Terasen Gas Inc. service areas, excluding Fort Nelson and Revelstoke, effective November 1, 2007;
- B. Subsection 71.1(3) of the *Utilities Commission Act* (the Act) states that a Gas Marketer must comply with Commission rules issued under subsection (10) and the terms and conditions, if any, attached to the Gas Marketer Licence held by the Gas Marketer;
- C. Commission Order G-90-03 established a Code of Conduct for Gas Marketers (Code of Conduct), which was amended as set out and revised by Commission Orders G-45-07, G-73-07, G-44-08, A-9-08, A-4-09, A-11-10 and A-9-11 establishing certain other requirements;
- D. Commission Order G-90-03 established Rules for Gas Marketers (Rules), which were revised by Commission Orders G-44-08, G-114-08, A-6-09 and A-11-11;
- E. Section 8.0 of the Rules states that all Gas Marketers must comply with the Rules and the Code of Conduct for Gas Marketers approved by the Commission;
- F. Subsection 82(1) of the Act states that the Commission may, on its own motion, inquire into, hear and determine a matter that under this Act it may inquire into, hear or determine on application or complaint;
- G. Section 8 of the Act states that the Commission may appoint or engage persons having special or technical knowledge necessary to assist the Commission in carrying out its functions;
- H. Subsection 78(2) of the Act states that an inquiry that the Commission considers necessary may be made by a member or officer or by a person appointed by the Commission to make the inquiry, and the Commission may act on that person's report;

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- I. On September 30, 2010, by Order A-21-10, the Commission granted Smart Energy (BC) Ltd. (Smart Energy), a Gas Marketer Licence subject to conditions;
- J. On August 18, 2011, Smart Energy applied to the Commission for renewal of its Gas Marketer Licence;
- K. The Commission retained the services of Business Practices and Consumer Protection Authority, (Consumer Protection BC) to carry out an Inquiry of Smart Energy's compliance with the Code of Conduct and the Rules, and upon completion to file a report with the Commission;
- L. Consumer Protection BC completed its Compliance Inquiry on Smart Energy and filed a report entitled Compliance Inquiry of Smart Energy (BC) Inc. (Report) with the Commission on January 16, 2012;
- M. On January 18, 2012, by Order A-2-12, the Commission ordered Smart Energy to file its written submissions in response to the Report by January 25, 2012;
- N. On January 23, 2012, the Commission received Smart Energy's submissions in response to Order A-2-12;
- O. On January 31, 2012, by Order A-3-12, the Commission issued Smart Energy a Gas Marketer Licence and informed Smart Energy that the Report alleges violations of the Code of Conduct for Gas Marketers (Code of Conduct) which will be pursued through a separate process;
- P. The investigation uncovered that, in addition to the exit fees outlined in the terms and conditions of the contract, Smart Energy adds to the amount placed in collections an administration fee of \$150. This fee is added to all exit fee amounts regardless of the contract specifically stating any charge, term or other condition to the amounts owing at agreement termination;
- Q. In its response, Smart Energy stated that the new contracts that Smart Energy began to utilize in November 2010 do not have the clause entitling Smart Energy to add the \$150 fee and has committed that this charge will not be charged to customers who cancel their contract;
- R. The investigation identified two violations of the Code of Conduct as they relate to Third Party Verification calls and information filled out on the contracts. In response to the findings, Smart Energy stated that it has never intentionally violated the Code of Conduct and that it is committed to work on the business in order to ensure compliance with the Code of Conduct, the Rules for Gas Marketers and its licence conditions;
- S. Subsection 117(2) of the Act states that, the Commission may order that the costs of the commission incidental to a proceeding before it are to be paid by one or more participants in the proceeding in such amounts and proportions as the commission may determine.

**NOW THEREFORE** the Commission orders:

- 1. Smart Energy will review all exit fee amounts paid by its customers over the period November 1, 2010 to present, and reimburse the \$150 fee to all customers whose contracts did not contain a clause specifically allowing Smart Energy to add the administration fee. In addition, all amounts currently placed in collections, will be adjusted to reflect the correct exit fee amount as per the terms and conditions of the contract.

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2. Smart Energy will file with the Commission by April 15, 2012, a list of customers who were reimbursed the \$150 fee and a list of customers whose accounts are currently in collections who also had their account amounts adjusted.
3. Smart Energy will file with the Commission by March 31, 2012, for Commission review and acceptance, written documentation verifying its processes and procedures on a prospective basis. The processes and procedures to be submitted are:
  - a. Code of Conduct Complaint Handling process;
  - b. Dispute Handling process; and
  - c. Process for enrolling new and/or renewing customers.
4. Smart Energy will pay the costs associated with the Consumer Protection BC Compliance Inquiry investigation and preparation of the Report in the amount of \$10,214.40. Smart Energy shall send a certified cheque or bank draft to the Commission payable to the Minister of Finance in the specified amount within 30 days of the date of this Order.

**DATED** at the City of Vancouver, in the Province of British Columbia, this        12<sup>th</sup>        day of March 2012.

BY ORDER

*Original signed by:*

L.F. Kelsey  
Commissioner