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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER A-7-12**

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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:** N.E. MacMurchy, Commissioner/Panel Chair  
A.A. Rhodes, Commissioner April 3, 2012  
D.A. Cote, Commissioner

**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* (Act) states that a Gas Marketer must comply with Commission rules issued under subsection (10) and the terms and conditions, if any, attached to its Gas Marketer Licence;
- 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;
- 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 as 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”;
- I. On January 27, 2011, by Order A-4-11, the Commission granted Active Energy Corp., operating as Active Renewable Marketing Ltd. (Active Energy), a Gas Marketer Licence subject to conditions;
- J. On September 20, 2011, the Commission informed Active Energy that it was in receipt of two separate Code of Conduct complaints linked to an Agent from Active Energy and requested a response to the complaints;
- K. On September 23, 2011 and on September 26, 2011, in response to the Commission’s request for comments, Active Energy identified the Agent who was the subject of the complaints as well as the disciplinary actions taken;
- L. On October 14, 2011, by Order A-22-11, the Commission retained the services of the Business Practices and Consumer Protection Authority (Consumer Protection BC) to carry out an inquiry into Active Energy’s compliance with the Code of Conduct and the Rules (Compliance Inquiry) and, upon completion, to file a report with the Commission;
- M. Consumer Protection BC completed its Compliance Inquiry and filed a report entitled “Compliance Inquiry Report Active Energy Corp.” (Report) with the Commission on November 18, 2011;
- N. On December 19, 2011, the Report and all relevant evidence were couriered to Active Energy;
- O. On December 19, 2011, by Order A-30-11, the Commission convened a hearing to make a determination on the findings of the Compliance Inquiry and requested submissions from Active Energy outlining its preference on the process;
- P. On January 6, 2012, the Commission received Active Energy’s submissions in response to Order A-30-11 seeking a written process;
- Q. On January 12, 2012, by Order A-1-12, the Commission ordered Active Energy to file its written submissions in response to the Report by January 30, 2012. Active Energy filed its submissions on January 30, 2012;
- R. On February 15, 2012, by Order A-4-12, the Commission convened a written hearing to review Active Energy’s compliance with its licence conditions, the Rules and the Code of Conduct, and to make a determination regarding the imposition of additional conditions, or cancellation of the gas marketing licence in the event a contravention was found;

- S. On February 22, 2012, the Commission issued its Information Requests to Active Energy, to which Active Energy responded on March 2, 2012. On March 9, 2012, Active Energy filed its final submission;
- T. The Commission Panel has considered the Report findings as well as Active Energy's replies to the Report and the Commission's Information Requests. The Report identifies 15 areas of concern and/or non-compliance with the Code of Conduct, the Rules and the licence conditions. The Commission Panel accepts 6 of the 15 findings as outlined in the Reasons for Decision;
- U. The Commission Panel determines that Active Energy is in non-compliance with the Code of Conduct, Articles 3, 7, 8, 9, 12, 13, 14, 15, 18, 21, 22 and 28;
- V. The Commission Panel determines that, by being in non-compliance with the Code of Conduct, Active Energy is in non-compliance with Section 8.0 of the Rules for Gas Marketers;
- W. The Commission Panel determines that, by being in non-compliance with the Code of Conduct and the Rules, Active Energy is in contravention of provision "a" and "b" of its Gas Marketer Licence.

**NOW THEREFORE** the Commission, for the Reasons attached hereto as Appendix A, orders as follows:

- 1. Active Energy is in breach of provisions "a" and "b" of its current Gas Marketer's Licence;
- 2. Active Energy's Gas Marketer Licence is amended to include the following additional conditions for the period of April 3, 2012 to October 31, 2012:
  - a. On a weekly basis, Active Energy is to submit to the Commission via express courier, in a digital form on a CD or memory stick, the following:
    - (i) all recordings of TPV calls, in their entirety, inbound and/or outbound both reaffirmed and non-reaffirmed;
    - (ii) all recordings of calls, in their entirety, received within the 10 day cancellation period irrespective of the call's outcome (customer proceeds with the cancellation or chooses to remain on the contract);
    - (iii) when requested to do so by the Commission, Active Energy is to provide a copy of the contract(s) referred to in subparagraphs (i) and (ii) above;
    - (iv) an excel spreadsheet containing a list of the calls provided under subparagraphs (i) and (ii) above which shall include: customer's name, customer's FortisBC account number, customer type (Residential, Commercial Rate 2, Commercial Rate 3), contract signing date, TPV call date, TPV outcome (Reaffirmed/Non-reaffirmed), 10-day cancellation call date, 10-day cancellation call outcome (Cancelled/Not-cancelled), and enrolment date (if applicable).

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- b. On-site visits by Head Office to the BC Sales office (s) are to take place at a minimum of once each quarter. Following each visit, Active Energy is to submit to the Commission a detailed report that includes:
- (i) an assessment of the actions of the independent sales agents with respect to their compliance and non-compliance with the Code of Conduct for Gas Marketers;
  - (ii) activities undertaken by Active Energy in the quarter to ensure Code of Conduct for Gas Marketers compliance for all BC staff and independent agents.
- c. Active Energy shall:
- (i) maintain a quarterly complaint ratio of less than 1% (complaints as a percentage of the contracts signed);
  - (ii) report its quarterly complaint ratio by no later than 15 days from the end of the quarter;
  - (iii) report the total number of quarterly sales by no later than 15 days from the end of the quarter;
  - (iv) report, by reason for complaint, the total number of quarterly complaints and the number of validated quarterly complaints by no later than 15 days from the end of the quarter; and
  - (v) follow the Commission guidelines as described in Appendix 1 of the Reasons for Decision dated April 3, 2012, for determining the number of complaints and the reasons for complaints.
3. Pursuant to section 117 of the Act, Active Energy is to pay the costs incurred by the Commission for the preparation of the Compliance Inquiry Report Active Energy Corp. by Consumer Protection BC and the legal costs incurred by the Commission for matters dealing with this Inquiry and hearing. Active Energy shall deliver to the Commission, a certified cheque or bank draft, payable to the Minister of Finance, within 15 days of being notified by the Commission of the amount of costs ordered to be paid.

**DATED** at the City of Vancouver, in the Province of British Columbia, this      *Third*      day of April 2012.

BY ORDER

*Original signed by:*

A.A. Rhodes  
Commissioner

Attachments

A COMPLIANCE INQUIRY INTO  
ACTIVE RENEWABLE MARKETING LTD.

**REASONS FOR DECISION**

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**1.0 BACKGROUND**

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. Subsection 71.1(3) of the *Utilities Commission Act* (Act) states that a Gas Marketer must comply with Commission rules issued under subsection (10) and the terms and conditions, if any, attached to its Gas Marketer Licence. 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. 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. 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.

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.” 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.”

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.”

On January 27, 2011, by Order A-4-11, the Commission granted Active Energy Corp., operating as Active Renewable Marketing Ltd. (Active Energy), a Gas Marketer Licence subject to conditions. On September 20, 2011, the Commission informed Active Energy that it was in receipt of two separate Code of Conduct complaints linked to an Agent from Active Energy and requested a response to the complaints.

On September 23, 2011 and on September 26, 2011, in response to the Commission’s request for comments, Active Energy identified the Agent who was the subject of the complaints as well as the disciplinary actions taken.

On October 14, 2011, by Order A-22-11, the Commission retained the services of the Business Practices and Consumer Protection Authority (Consumer Protection BC) to carry out an inquiry into Active Energy’s compliance with the Code of Conduct and the Rules (Compliance Inquiry), and, upon completion, to file a report with the Commission. Consumer Protection BC completed its Compliance Inquiry and filed a report entitled Compliance Inquiry Report Active Energy Corp. (Report) with the Commission on November 18, 2011. On December 19, 2011, the Report and all relevant evidence were couriered to Active Energy.

On December 19, 2011, by Order A-30-11, the Commission convened a hearing to make a determination on the findings of the Compliance Inquiry and requested submissions from Active Energy outlining its preference on the process. On January 6, 2012, the Commission received Active Energy’s submissions in response to Order A-30-11 seeking a written process.

On January 12, 2012, by Order A-1-12, the Commission ordered Active Energy to file its written submissions in response to the Report by January 30, 2012. Active Energy filed its submissions on January 30, 2012.

On February 15, 2012, by Order A-4-12, the Commission convened a written hearing to review Active Energy's compliance with its licence conditions, the Rules and the Code of Conduct, and to make a determination regarding the imposition of additional conditions, or cancellation of the gas marketing licence in the event a contravention was found.

On February 22, 2012, the Commission issued its Information Requests to Active Energy, to which Active Energy responded on March 2, 2012. On March 9, 2012, Active Energy filed its final submission.

The Commission Panel has considered the findings contained in the Report as well as Active Energy's replies to the Report and the Commission's Information Requests. The Report identifies 15 areas of concern and/or non-compliance with the Code, the Rules and the licence conditions. The Commission Panel accepts 6 of the 15 findings as outlined below.

## **2.0 ACTIVE ENERGY'S MARKETING MATERIALS**

### **2.1 Report Findings**

One Consumer gave a document to the investigator that had been provided by Active Energy's sales agent. The document contained an article from Export Development Canada dated May 19, 2010. The article had passages highlighted in yellow, one of which was the phrase "...In addition to our forecasted 40% increase in natural gas prices this year..." (Report, p. 38; Exhibit 13)

### **2.2 Response of Active Energy**

In its response dated January 30, 2012, Active Energy states that "Active senior management is fully aware of the requirement not to present consumers with articles or material displaying future price projections. Active acknowledges its responsibility to ensure the sales agents are not providing inappropriate information about future price projects [sic] to consumers. As a result of the complaints, the BCUC compliance audit and Active's internal review, it is evident that on a number of occasions this requirement was not met."

### **2.3 Commission Determination**

Articles 15, 18 and 22 of the Code of Conduct state:

Honesty, Fairness and Veracity –Article 15 "...A Salesperson shall not make any statement or take any measure which, directly or by implication, omission, ambiguity or exaggeration, is likely to mislead a Consumer with regard to the benefits of the Program, terms of the Offer, Consumer's Agreements or any other matter..."

Comparisons and Fair Competition –Article 18 "....no projections of future pricing may be presented to the Consumer."

Comparisons and Fair Competition – Article 22 “A Gas Marketer shall not engage in any false or misleading advertising or publish any material which may have the effect of misleading potential Consumers.”

Given Active Energy’s admission that on a number of occasions Consumers were presented with articles or materials displaying future price projections, as well as the fact that the article dated May 19, 2010 was presented to Consumers as recently as September, 2011 (when the 40% price increase had not materialized as forecast in the article), the Commission Panel finds Active Energy in non-compliance with Articles 15, 18 and 22 of the Code of Conduct.

### **3.0 IDENTIFICATION AND PROOF OF LICENCING**

#### **3.1 Report Findings**

Both agents under investigation were wearing badges with Active Energy’s expired licence number A-22-09A. That licence expired on October 31, 2010. Active Energy’s licence at the time of the Investigation was A-4-11. (Report, p. 37)

#### **3.2 Response of Active Energy**

In its response dated January 30, 2012, Active Energy states that it “has corrected this oversight and it has changed its badge template to incorporate its most up to date license number and has re-issued all BC sales agents with new badges. Active will ensure that in the future sales badges will be updated immediately if new license numbers are granted.”

#### **3.3 Commission Determination**

Article 7 of the Code of Conduct states:

Identity of Gas Marketer – Article 7 “All Salespersons shall immediately, truthfully and fully identify themselves and provide proof of licensing and bonding, to prospective Consumers. They shall also truthfully and fully indicate the purpose of their approach to the Consumers, identify the Gas Marketer with whom they are associated and indicate that they are Marketing Gas under the Commodity Unbundling Service.”

Given Active Energy’s admission that its sales agents did not provide appropriate current proof of licensing to Consumers, the Commission Panel finds Active Energy in non-compliance with Article 7 of the Code of Conduct.

### **4.0 MARKETING EFFORTS**

#### **4.1 Report Findings**

- 4.1.1** During the review of a random sample of 28 Third Party Verification (TPV) calls, in two instances the Consumer stated that the contract was signed by an unauthorized individual. (Report, pp. 16, 17)

- 4.1.2** The investigation identified four instances where the sales agents verbally identified themselves as being from FortisBC or the BCUC. (Report, pp. 24, 27; Exhibits 60, 78)
- 4.1.3** The investigation found six instances where the sales agents misrepresented the rate by stating the rate will be lower or the same as FortisBC, or promised savings. (Report, pp. 24, 25, 27, 28)
- 4.1.4** Two instances were identified where the Consumer stated they were not interested in the product, however, the sales agents would not leave. One of these instances led to a verbal altercation between the sales agent and the Consumer. Active Energy suspended the sales agent in question for three days and retrained the sales agent. (Report, pp. 17, 39)

## **4.2 Response of Active Energy**

Active Energy did not specifically address each one of the Report findings as listed in 4.1.1 through 4.1.4; however, it identified the following actions it was taking in response to the findings of the Report. These include:

- Mandatory retraining workshops for all sales representatives;
- Mandatory retraining workshops for all TPV representatives;
- Detailed review of the Report with the BC Sales Manager;
- Regular weekly telephone conference calls between the head office and Sales Managers focussing on Code of Conduct compliance and team and customer feedback;
- Ensuring that the provision of forecasts to customers has ceased and ensuring that its training program indicates this is not appropriate; and
- Reviewing with sales agents and TPV representatives the need to ensure they do not put undue pressure on Consumers. (Active Energy response dated January 30, 2012, pp. 1-5)

## **4.3 Commission Determination**

### **4.3.1** Article 3 of the Code of Conduct states:

Obligations and Liabilities – Article 3 “...*The Gas Marketer shall confirm with the Consumer that the Customer has signing authority to enter into the Consumer Agreement.*”

**The Commission Panel accepts the Report findings and concludes that some contracts were signed by unauthorized individuals and finds Active Energy in non-compliance with Article 3 of the Code of Conduct.**

### **4.3.2** Articles 8, 12 and 21 of the Code of Conduct state:

Identity of the Gas Marketer – Article 8 “*Neither a Gas Marketer nor any Salesperson shall mislead or otherwise create any confusion in the mind of a Consumer about the identity of the represented Gas Marketer, its promotion campaigns or trade mark, or those of competitors and/or LDCs.*”



*Specifically, a Gas Marketer or any Salesperson when marketing a supply contract to a Consumer shall state that they are not representing the Consumer's local distribution company."*

Telephone, Door to Door and Internet Marketing - Article 12 *"....Salespersons must immediately, truthfully and fully identify themselves to the prospective Consumers. They shall also immediately, truthfully and fully indicate the purpose of their approach to the Consumers, identify the Gas Marketer with whom they are associated and indicate that they are selling Gas under the Commodity Unbundling Service."*

Comparisons and Fair Competition – Article 21 *"....A Salesperson shall clearly indicate that the Offer is not being made by a regulated Gas distributor, and not seek to mislead or otherwise create any confusion in the mind of a Consumer about the identity of the Gas Marketer, or about the trademarks of the regulated distributor or of competitors."*

**The Commission Panel accepts the Report findings that in some instances Active Energy's sales agents identified themselves as being from FortisBC or BCUC and finds Active Energy in non-compliance with Articles 8, 12 and 21 of the Code of Conduct.**

**4.3.3** Article 9 of the Code of Conduct states:

Integrity – Article 9 *"Salespersons shall in good faith assist Consumers to evaluate the nature of the transactions. Marketing efforts shall be organized and carried out so as not to:*

- *create confusion in the mind of the Consumer;*
- *mislead the Consumer or misrepresent any aspect of the Offer or Consumer's Agreements;*
- *abuse the trust of the Consumer;*
- *unduly pressure or harass the Consumer to enter into transactions; and*
- *exploit the lack of experience and knowledge of the Consumer."*

**The Commission Panel accepts the Report findings that in some instances Active Energy's sales agents misrepresented the rate to be charged and finds Active Energy in non-compliance with Article 9 of the Code of Conduct.**

**4.3.4** Article 14 of the Code of Conduct states:

Respect of Privacy – Article 14 *"...The right of a Consumer to refuse further discussion shall be respected."*

**The Commission Panel accepts the Report findings that in some instances the Consumer's right to refuse further discussion was not respected and finds Active Energy in non-compliance with Article 14 of the Code of Conduct.**

## **5.0 ACTIVE ENERGY'S CLASSIFICATION & LOGGING OF CONSUMER COMPLAINTS AND ACTIVE ENERGY'S INVESTIGATION OF CONSUMER COMPLAINTS**

### **5.1 Report Findings**

The investigation found that:

- Active Energy is not following its own written complaint handling procedures;
- Active Energy's complaint handling system is focused on customer complaints (those who have signed a contract) as opposed to Consumer complaints (those who may or may not have signed a contract);
- Active Energy's current practice of having its Sales Manager investigate Consumer complaints of its sales agents does not seem to be working. The Incumbent Sales Manager has an acknowledged weakness in organization and in writing things down;
- Active Energy has a propensity to deem/log complaints "resolved" once the contract in question has been cancelled as opposed to actually investigating complaints; and
- Active Energy's three-level system of complaint handling is ineffective, improperly characterizes serious offences such as misrepresentation as not serious, and is heavily biased in favour of complaint resolution at the expense of complaint investigation. (Report, pp. 39, 40)

### **5.2 Response of Active Energy**

In its response dated January 30, 2012, Active Energy asserts that it "believes its current complaint categorization methods are sound especially now that Active has implemented the improvements to its other processes." Active Energy claims that it is often difficult for it to follow up on a complaint with a Consumer because the Consumer, having cancelled a contract, often has no desire for further contact with the company.

### **5.3 Commission Determination**

Article 13 of the Code of Conduct states:

*Complaints and Dispute Resolutions – Article 13 "Should any Consumer complain that a Gas Marketer or Salesperson has engaged in any improper course of conduct pertaining to Marketing under the Commodity Unbundling Service, the Gas Marketer shall promptly investigate the complaint and take all appropriate and necessary steps in the circumstances to redress any and all wrongs disclosed by such investigation."*

**Given that the Report identified a discrepancy between Active Energy's written complaint process and the actual process used in handling complaints, the Commission Panel finds Active Energy in non-compliance with Article 13 of the Code of Conduct.**

## 6.0 10-DAY CANCELLATION PERIOD

### 6.1 Report Findings

The investigation identified an instance where a Call Center Representative engaged in sales activity and tried to pressure an 87 year old customer into remaining on the contract although the customer had explicitly requested cancellation of the contract within the 10 day Cancellation Period. During this call the Call Center Representative informed the customer that the government is forecasting a 40% increase in the price of gas. (Report, p. 41; Exhibit 87 - TPV call)

### 6.2 Response of Active Energy

In its response dated January 30, 2012, Active Energy states that their “call center staff is trained to lead the customer through up to three rebuttals prior to cancelling a contract when the customer appears to be uncertain. Should the customer explicitly state they simply wish to cancel, the staff is trained to cancel the contract and ask the customer to contact Active should they ever want the product in the future.”

Active Energy states that is “committed to rectify any problems that occur” and “has re-trained its entire TPV team on adherence to the Code of Conduct for Gas Marketers.”

### 6.3 Commission Determination

Article 28 of the Code of Conduct states:

*Cancellation of Agreements – Article 28 “A Gas Marketer shall accept a Consumer’s request for cancellation when within the 10 day Cancellation Period, and under the terms of the contract without engaging in further sales or marketing activity under that Consumers Agreement.”*

**Given Active Energy’s admission that in some instances the cancellation process for Consumers was made more difficult, the Commission Panel finds Active Energy in non-compliance with Article 28 of the Code of Conduct. The Commission Panel notes that this is another example of Active Energy’s representatives using future price projections in violation with Article 18 of the Code of Conduct.**

## 7.0 ADDITIONAL RESPONSE FROM ACTIVE ENERGY

In addition to the detailed responses provided to the Report’s findings, Active Energy provides an Overview of Actions Taken. Active Energy states it “takes very seriously any allegation that Active or its agents had contravened the Code of Conduct or when its business practices are questioned. It strives and will continue to strive, to implement processes that will minimize complaints arising from Active’s agents’ frequent interaction with consumers and customers.” (January 30, 2012 response, p. 1) Active Energy further states that “although Active does not agree with all of the allegations and conclusions in the Report it is committed to rectifying the problems identified.” (January 30, 2012 response, p. 1)

In its final submission to the Commission on March 9, 2012, Active Energy reiterated that its January 30, 2012 response outlined how it had appropriately responded to the Report. In the March 9, 2012 submission, Active Energy pointed out the low number of complaints that it has received relative to the number of contracts submitted. It further stated that it has taken the allegations raised in the Report seriously and has addressed them in a proactive manner. The March 9, 2012 submission also repeated a number of the measures indicated

in the January 30, 2012 response and in addition, highlighted the following changes to Active Energy's internal processes:

- Instead of an annual visit by Head Office to the BC Sales office there will be a visit by Head Office at least once every six months and at least once a year the visit will include a member of compliance staff for the purpose of monitoring in-field compliance;
- Heightened screening efforts in data entry with escalation to management and rejection of submissions for incorrectly filled out contracts; and
- Implementation of 100% compliance with the TPV script with monitoring to ensure this occurs.

## **8.0 CONCLUSION**

**The Commission Panel determines that Active Energy is in non-compliance with the Code of Conduct, Articles 3, 7, 8, 9, 12, 13, 14, 15, 18, 21, 22 and 28.**

**The Commission Panel determines that, by being in non-compliance with the Code of Conduct, Active Energy is also in non-compliance with section 8.0 of the Rules for Gas Marketers.**

*Rules Section 8.0 - Code of Conduct "All Gas Marketers must comply with the Rules and the Code of Conduct for Gas Marketers approved by the Commission and as may be amended by the Commission from time to time. Gas Marketers in violation of the Rules or the Code of Conduct may be subject to penalties and licence suspension or cancellation. Gas Marketers will reference the Code of Conduct for Gas Marketers and its availability to customers in their Notice of Appointment of Marketer and make a copy available to the customer."*

**The Commission Panel determines that, by being in non-compliance with the Code of Conduct and the Rules, Active Energy is in contravention of provisions "a" and "b" of its Gas Marketer Licence.**

*Licence condition a. "Active Energy will carry out the undertakings as set out in the Application for a Licence to Market Natural Gas dated December 31, 2010 and the Rules for Gas Marketers."*

*Licence condition b. "Active Energy will comply with the Code of Conduct for Gas Marketers and Rate Schedule 36 of Terasen Gas Inc. Active Energy shall ensure that its employees, salespersons or other representatives of its products and services comply with the standards required of a Gas Marketer as set out in the Code of Conduct for Gas Marketers and Active Energy shall be responsible for any non-compliance of its employees, salespersons or other representatives of its products and services."*

The Commission Panel acknowledges that Active Energy has committed to undertake a number of measures to bring itself into compliance. However the Commission Panel finds it necessary to amend Active Energy's licence and impose the following conditions to ensure that Active Energy's compliance meets the requisite standard and is in the public interest.

- a. On a weekly basis, Active Energy is to submit to the Commission via express courier, in a digital form on a CD or memory stick, the following:
  - (i) all recordings of TPV calls, in their entirety, inbound and/or outbound both reaffirmed and non-reaffirmed;

- (ii) all recordings of calls, in their entirety, received within the 10 day cancellation period irrespective of the call's outcome (customer proceeds with the cancellation or chooses to remain on the contract);
  - (iii) when requested to do so by the Commission, Active Energy is to provide a copy of the contract(s) referred to in subparagraphs (i) and (ii) above;
  - (iv) an excel spreadsheet containing a list of the calls provided under subparagraphs (i) and (ii) above which shall include: customer's name, customer's FortisBC account number, customer type (Residential, Commercial Rate 2, Commercial Rate 3), contract signing date, TPV call date, TPV outcome (Reaffirmed/Non-reaffirmed), 10-day cancellation call date, 10-day cancellation call outcome (Cancelled/Not-cancelled), and enrolment date (if applicable).
- b. On-site visits by Head Office to the BC Sales office(s) are to take place at a minimum of once each quarter. Following each visit, Active Energy is to submit to the Commission a detailed report that includes:
  - (i) an assessment of the actions of the independent sales agents with respect to their compliance and non-compliance with the Code of Conduct for Gas Marketers;
  - (ii) activities undertaken by Active Energy in the quarter to ensure Code of Conduct for Gas Marketers compliance for all BC staff and independent agents.
- c. Active Energy shall:
  - (i) maintain a quarterly complaint ratio of less than 1% (complaints as a percentage of the contracts signed);
  - (ii) report its quarterly complaint ratio by no later than 15 days from the end of the quarter;
  - (iii) report the total number of quarterly sales by no later than 15 days from the end of the quarter;
  - (iv) report, by reason for complaint, the total number of quarterly complaints and the number of validated quarterly complaints by no later than 15 days from the end of the quarter; and
  - (v) follow the Commission guidelines as described in Appendix 1 of the Reasons for Decision dated April 3, 2012 for determining the number of complaints and the reasons for complaints.

The Commission further orders that pursuant to section 117 of the Act, Active Energy is to pay the costs incurred by the Commission for the preparation of the Compliance Inquiry Report Active Energy Corp. by Consumer Protection BC and the legal costs incurred by the Commission for matters dealing with this inquiry and hearing. Active Energy shall deliver to the Commission, a certified cheque or bank draft, payable to the Minister of Finance, within 15 days of being notified by the Commission of the amount of costs ordered to be paid.

### APPENDIX 1

The Commission defines a customer complaint as anytime when a customer expresses concerns about a Gas Marketer's services, products, or the customer's experience with the Gas Marketer. Accordingly, the number of complaints should include cases where a TPV or 10-day cancellation call has occurred and is reflective of any issues with respect to a sales agent's conduct.

The complaints are to be classified by reason for complaint as follows:

COMPLAINT REASON	DEFINITION
Brochure not left	Customer Choice brochure has not been left with the customer
Disputed Signature	Consumer denies that they themselves, or anyone else in their household or business, signed an agreement
Language Barrier	Consumer states they were unable to fully understand the agreement they entered into due to a language barrier
Misrepresentation – Nature/Purpose	Consumer states the sales agent misrepresented the nature/purpose of the visit
Misrepresentation – Utility Affiliate	Consumer states the sales agent misrepresented Active Energy's affiliation with FortisBC
Misrepresentation – Identity	Consumer states the sales agent misrepresented his/her identity and introduced him/herself as working on behalf of FortisBC or BCUC
Misrepresentation – Term	Consumer states the sales agent misrepresented the term/length of the program set out in the agreement
Misrepresentation – Savings	Consumer states the sales agent misrepresented the rate and guaranteed or promised a Consumer savings
Solicitation – Sign Posted	Consumer states the sales agent ignored the "No Solicitation" notice/sign posted
Terms and Conditions Not Left With Customer	Consumer states the sales agent did not leave a signed copy of the contract with them
Unauthorized Signature - Minor	Consumer states the sales agent allowed a minor (<18) to execute the agreement
Unauthorized Signature	Consumer states that someone other than the account holder, spouse, or a legally authorized representative executed the agreement
Unprofessional Behaviour	Consumer feels the sales agent was rude and/or abrasive during presentation and/or the Consumer felt pressured



LICENCE No. A-24-11A

# GAS MARKETER LICENCE

*Active Energy Corp.*

*Operating as: Active Renewable Marketing Ltd.*

is granted a licence for the purpose of providing advice to, or acting on behalf of, a low volume consumer <sup>(1)</sup> purchasing gas directly in the Province of British Columbia subject to the terms and conditions contained in Commission Order A-7-12, which are set out in the reverse of the Licence.

**BRITISH COLUMBIA UTILITIES COMMISSION**

*Original signed by:*

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A.A. Rhodes, Commissioner

ISSUED: April 3, 2012

EXPIRES: October 31, 2012

(1) As described in the Rules for Gas Marketers

This Gas Marketer Licence is subject to the following conditions:

- a. Active Energy will carry out the undertakings as provided in its application and as set out in the revised Rules for Gas Marketers which was effective July 25, 2011.
- b. Active Energy will comply with the Code of Conduct for Gas Marketers and Rate Schedule 36 of FortisBC Energy Inc. Active Energy shall ensure that its employees, salespersons or other representatives of its products and services comply with the standards required of a Gas Marketer as set out in the Code of Conduct for Gas Marketers and Active Energy shall be responsible for any non-compliance of its employees, salespersons or other representatives of its products and services.
- c. Active Energy will maintain a \$250,000 performance security in full force and effect for the duration of the Licence.
- d. Active Energy will file with the Commission unaudited quarterly financial statements no later than 45 days after the end of each quarter.
- e. Active Energy will file with the Commission the most recent version of the documents submitted to satisfy Section 7, Financial Qualifications, of the Licence Requirements.
- f. Active Energy will file with the Commission for its comment and approval the documents submitted under Sections (8), (9), (10), (11) and (12) of the Licence Requirements as soon as changes are made and prior to their commercial distribution and/or use.
- g. The Commission may, at any time and without prior notice to Active Energy, amend or impose new terms and conditions on, suspend, or cancel the Gas Marketer Licence for reasons the Commission, in its sole discretion, deems and considers sufficient.
- h. The Gas Marketer Licence and all copies of it shall remain the property of the Commission. Active Energy will return these documents forthwith upon written request from the Commission.
- i. On a weekly basis, Active Energy is to submit to the Commission via express courier, in a digital form on a CD or memory stick, the following:
  - (i) all recordings of TPV calls, in their entirety, inbound and/or outbound both reaffirmed and non-reaffirmed;
  - (ii) all recordings of calls, in their entirety, received within the 10 day cancellation period irrespective of the call's outcome (customer proceeds with the cancellation or chooses to remain on the contract);
  - (iii) when requested to do so by the Commission, Active Energy is to provide a copy of the contract(s) referred to in subparagraphs (i) and (ii) above;



- (iv) an excel spreadsheet containing a list of the calls provided under subparagraphs (i) and (ii) above which shall include: customer's name, customer's FortisBC account number, customer type (Residential, Commercial Rate 2, Commercial Rate 3), contract signing date, TPV call date, TPV outcome (Reaffirmed/Non-reaffirmed), 10-day cancellation call date, 10-day cancellation call outcome (Cancelled/Not-cancelled), and enrolment date (if applicable).
- j. On-site visits by Head Office to the BC Sales office(s) are to take place at a minimum of once each quarter. Following each visit, Active Energy is to submit to the Commission a detailed report that includes:
  - (i) an assessment of the actions of the independent sales agents with respect to their compliance and non-compliance with the Code of Conduct for Gas Marketers;
  - (ii) activities undertaken by Active Energy in the quarter to ensure Code of Conduct for Gas Marketers compliance for all BC staff and independent agents.
- k. Active Energy shall:
  - (i) maintain a quarterly complaint ratio of less than 1% (complaints as a percentage of the contracts signed);
  - (ii) report its quarterly complaint ratio by no later than 15 days from the end of the quarter;
  - (iii) report the total number of quarterly sales by no later than 15 days from the end of the quarters;
  - (iv) report, by reason for complaint, the total number of quarterly complaints and the number of validated quarterly complaints by no later than 15 days from the end of the quarter; and
  - (v) follow the Commission guidelines as described in Appendix A of the Reasons for Decision dated April 2, 2012 for determining the number of complaints and the reasons for complaints.