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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER      A-3-15**

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

**and**

**FortisBC Energy Inc.  
Customer Choice Program Seventh Annual General Meeting**

**BEFORE:**      D. A. Cote, Commissioner

May 8, 2015

**O R D E R**

**WHEREAS:**

- A. FortisBC Energy Inc. (FEI) obtained a Certificate of Public Convenience and Necessity (CPCN) on August 14, 2006, for the Commodity Unbundling Project for Residential Customers (Customer Choice) in accordance with the government's 2002 energy policy, which allowed for the direct sale of natural gas to residential and small volume commercial customers through gas marketing companies licensed by the British Columbia Utilities Commission (Commission);
- B. Article 34 of the Code of Conduct for Gas Marketers requires the Commission to hold an Annual General Meeting to discuss program improvements or enhancements. The Annual General Meeting can take place by written or in-person process, as determined by the Commission;
- C. On February 26, 2015, by Order A-2-15, the Commission established a preliminary Regulatory Timetable for the seventh Annual General Meeting;
- D. In accordance with the preliminary Regulatory Timetable: FEI filed the Customer Choice program statistics for the 2014 calendar year on March 6, 2015; FEI and interveners submitted issues for discussion by March 27, 2015; and FEI and interveners submitted reply submissions on which issues warrant discussion and whether a written process or in-person meeting is warranted by April 10, 2015; and
- E. The Commission has reviewed the submissions outlined in Recital D and determines that an in-person meeting is warranted to address the issues included on the Issues List attached as Appendix B to this order.

**NOW THEREFORE** the Commission orders as follows:

- 1. A timetable is established for the remainder of the seventh Customer Choice Program Annual General Meeting, following the Regulatory Timetable attached as Appendix A to this order.

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2. Only the issues included on the Issues List attached as Appendix B to this order will be addressed during the remainder of the proceeding for the reasons outlined in Appendix B.
3. An in-person meeting will be held at 1125 Howe Street, Vancouver, British Columbia on June 9, 2015, following the agenda attached as Appendix C to this order.

**DATED** at the City of Vancouver, in the Province of British Columbia, this                      8<sup>th</sup>                      of May 2015.

BY ORDER

D.A. Cote  
Commissioner

Attachments

FortisBC Energy Inc.  
Customer Choice Program Seventh Annual General Meeting

**REGULATORY TIMETABLE**

<b>ACTION</b>	<b>DATE (2015)</b>
Commission establishes Issues List and date(s) for written submissions or in-person meeting	Friday, May 8
In-Person Annual General Meeting	Tuesday, June 9
FEI releases Customer Choice Annual Report, addressing the issues raised	Tuesday, June 30
Intervener Final Submissions	Wednesday, July 15
FEI Reply Submissions	Wednesday, July 29

FortisBC Energy Inc.  
Customer Choice Program Seventh Annual General Meeting

**ISSUES LIST**

**1.0 INTRODUCTION**

The following parties raised issues for discussion during the Seventh Annual General Meeting proceeding: FortisBC Energy Inc. (FEI), Access Gas Services Inc. (Access Gas), Direct Energy Marketing Ltd. (Direct Energy), Just Energy (BC) LP (Just Energy), Commission staff and the British Columbia Public Interest Advocacy Centre on behalf of the British Columbia Old Age Pensioners' Organization, et al (BCOAPO). The Commission has reviewed the issues raised for discussion and, based on the submissions, established the Issues List below. The issues will be discussed as proposed in the submissions dated March 27, 2015, unless otherwise noted below.

Issues List	
I.	Update on customer complaints
II.	Customer protection education activities
III.	Expansion of the Customer Choice Program to Vancouver Island and Whistler
IV.	Review of transaction fees charges to gas marketers
V.	Code of Conduct for Gas Marketers
VI.	Third Party Verification (TPV) enhancement
VII.	Anniversary drop rule
VIII.	Cost recovery, fees and mechanisms – plan and timing, if warranted
IX.	Proposal to review the Essential Services Model – plan, if warranted
X.	Marketing disputes

**2.0 MODIFICATIONS**

Of the 10 issues included for discussion, the Panel has determined four of the issues require a modified scope from what was proposed in order to facilitate a productive discussion, as outlined below.

**2.1 Cost recovery, fees and mechanisms**

According to the Customer Choice Program Statistics, filed by FEI on March 6, 2015: "As Gas Marketer recoveries decline while Program Costs remain stable, FEI must ensure that Program costs are recuperated by program

fees. While the expansion to Vancouver Island and Whistler will provide an extra infusion of program funds, FEI does not believe it will be enough to cover the shortfall in Program funding in future years. The Company will raise this issue and present the company's recommendations regarding potential fee adjustments at the next Customer Annual General Meeting."<sup>1</sup>

By letter dated March 27, 2015, FEI states: "FEI would like to discuss potential fee adjustments to the customer billing and confirmation letter charges in order to cover the current cost of postage. These fees have not been adjusted since Program inception in 2007."<sup>2</sup>

By letter dated March 27, 2015, BCOAPO states: "As it will be very difficult to forecast recoveries going forward, in addition to adjusting the fees paid by marketers, BCOAPO would like to discuss the possibility of establishing a variance account such that any over- or under-recoveries going forward would be refunded or charged to marketers. BCOAPO would like a discussion of the possibility of a variance account or some other similar mechanism to ensure that program costs are fully recovered from the marketers."<sup>3</sup>

By letter dated April 10, 2015, Direct Energy states: "Given that FEI has already raised the issue of program cost and recovery and intends to present the company's recommendations regarding potential fee adjustments during the AGM process, the BCOAPO proposal is premature."<sup>4</sup>

Just Energy makes a similar argument via email dated April 10, 2015, stating, "Just Energy is of the view that the BCOAPO issue is premature given FortisBC's issue #2 Review of Transaction Fees charged to Gas Marketers will discuss potential adjustments to the recovery mechanisms."<sup>5</sup>

FEI believes the issue warrants further discussion during the Annual General Meeting (AGM), in conjunction with FEI's proposal to review the transaction fees charged to gas marketers.<sup>6</sup>

### Commission determination

The Panel agrees with Direct Energy and Just Energy that BCOAPO's proposal to discuss cost recovery, fees and mechanisms may be premature. In the Panel's view, FEI is the appropriate party to raise and lead the discussion on the issue of cost recovery, fees and mechanisms, and notes FEI has not proposed to do so during this AGM. Rather, FEI has proposed to discuss program fees in the context of transaction fees charged to gas marketers only. **The Panel determines a discussion on cost recovery, fees and mechanisms, as raised by BCOAPO, is premature.**

A fulsome and productive discussion on this issue is not possible without detailed analysis, input and leadership from FEI. **On this basis, the Panel determines the discussion on this issue shall be limited to whether a detailed review of the cost recovery, fees and mechanisms is required at this point; and if so, the development of a potential plan and timeline for doing so.**

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<sup>1</sup> Exhibit B-1, pp. 19–20.

<sup>2</sup> Exhibit B-2, p. 2.

<sup>3</sup> Exhibit C5-2, pp. 1–2.

<sup>4</sup> Exhibit C2-3, p. 1.

<sup>5</sup> Exhibit C3-3, p. 1.

<sup>6</sup> Exhibit B-3, p. 2.

## 2.2 Proposal to review the Essential Services Model

Access Gas, Direct Energy and Just Energy propose a review of the Essential Services Model (ESM) for discussion at the AGM.

The ESM is the foundation for the Commodity Unbundling Program that was implemented for commercial customers on November 1, 2004 as well as for residential customers on November 1, 2007. Under the ESM, a gas marketer delivers a quantity of the natural gas commodity to Terasen Gas Inc. (now FEI) based on the utility's normalized forecast of the gas marketer's customers annual load requirements. A cornerstone of the ESM has been FEI's ongoing responsibility to provide billing services for all customers whether they choose a fixed rate product from a gas marketer or remain on the FEI regulated variable rate. This business requirement was affirmed by gas marketers when the Commercial Unbundling Program was introduced in 2004, and again when the Customer Choice was rolled out to residential customers in 2007.

According to Access Gas, Direct Energy and Just Energy, it has been over a decade since the ESM was developed as the program framework and a fundamental review of the ESM is warranted.

Access Gas "would like to discuss the potential impact of changing the ESM from the current annual settlement of marketer supply requirements to a monthly settlement of marketer supply requirements. In other words, change the ESM's time horizon from twelve months to one month. In addition to dramatically improving the product landscape, this would solve the aforementioned issue of the Anniversary Drop rule."<sup>7</sup>

Direct Energy "believes that a review of the ESM should be completed to determine the impediments the current model has on growing the Customer Choice Program. Such a review should include the impact of the ESM on limiting Gas Marketer product and service offerings, pricing and customer complaints."<sup>8</sup>

Just Energy submits "now is an appropriate time to conduct a review of the Essential Services Model ('ESM') to determine the impediments and required improvements and enhancements to the current model in order to advance the Customer Choice program... The review should at a minimum include the impact that the ESM has on limiting Gas Marketer products and services, pricing, cost, cost recovery and customer complaints."<sup>9</sup>

By letter dated April 10, 2015, FEI states "... any further investment or activity to replace the ESM is unnecessary and not in the best interests of customers. FEI believes that after already spending approximately \$11 million on the capital investment of the Customer Choice Program, ratepayers would have little appetite to fund a Program redesign to satisfy Gas Marketers' requests... FEI submits that the Essential Services Model is providing Gas Marketers and customers with more benefits than drawbacks such as being the Supplier of Last Resort, 100 percent load factor gas for Marketers and bill services provided by FEI."<sup>10</sup>

### Commission determination

The purpose of the AGM is to discuss program enhancements and improvements. To review, and consider modifying, the framework of the program is a much larger issue than a program enhancement or improvement within the existing framework. **As such, the Panel finds the AGM is not an appropriate method by which to**

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<sup>7</sup> Exhibit C1-2, p. 2.

<sup>8</sup> Exhibit C2-2, p. 1.

<sup>9</sup> Exhibit C3-2, p. 1.

<sup>10</sup> Exhibit B-3, Appendix A, pp. 6-7.

deal with this issue. The Panel determines the discussion regarding ESM shall be limited to whether a review of ESM is warranted at this time; and if so, the development of a potential plan for doing so.

### 2.3 TPV enhancement

By letter dated March 27, 2015, Direct Energy states:

...for customers who do not wish to partake in the [proposed] door-step verification process noted above but wish to enrol in the Customer Choice program, DE [Direct Energy] would like to provide a proposal at the AGM to allow customers to 'self-verify' at a time of their choosing (i.e. at a time less than 24 hours if they choose) by providing customers at or closely following the point of sale, with electronic or telephonic means to verify their contract. DE intends to provide a presentation and documentation to the Commission and stakeholders at the AGM in support of this initiative.<sup>11</sup>

FEI believes the TPV issue raised by Direct Energy is appropriate for further discussion at the AGM.<sup>12</sup>

### Commission determination

As outlined in section 3.5 following, the Panel has denied the proposal to discuss the removal of the 24 hour waiting period to conduct the TPV call. **The Panel determines that only one element of Direct Energy's TPV Enhancement issue shall be considered during the AGM: the proposal to allow customers to verify via electronic means..** If Direct Energy no longer wishes to present on the TPV enhancement issue given the aforementioned determination, there is no reason to do so.

### 2.4 Anniversary drop rule

In its March 27, 2015 submission, Access Gas proposes that customers should be able to cancel their contracts outside of the anniversary date. According to Access Gas,

...all FortisBC customers have access to Customer Choice and over time each FortisBC customer will positively and/or negatively impact the MCRA account... These impacts stem from daily, weekly and annual consumption patterns, opening of accounts, closing of accounts, enrolling in Customer Choice, etc. ... allowing a consumer (not the Gas Marketer) to end an enrollment mid-term could have either a positive or negative impact that is not materially different from an account closure or commencement. Over a year the impacts are offsetting and it follows that the option to terminate mid-contract year should be made available to all consumers.<sup>13</sup>

FEI opposes the inclusion of this issue on the basis that this this proposal is inconsistent with the ESM and "the AGM agenda topics [should] be limited to discussing enhancements and improvements to the existing Program model."<sup>14</sup>

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<sup>11</sup> Exhibit C2-2, p. 2.

<sup>12</sup> Exhibit B-3, p. 2.

<sup>13</sup> Exhibit C1-2, pp. 1-2

<sup>14</sup> Exhibit B-3, Appendix A, p. 7.

### Commission determination

The Panel agrees with FEI that Access Gas' proposal to allow cancellations outside of the anniversary date is inconsistent with the ESM. However, Access Gas argues that since over time each FortisBC customer will positively and/or negatively impact the Midstream Cost Reconciliation Account, Customer Choice customers should not be held to a different standard by not being able to cancel their contract until the anniversary date. **The Panel believes a discussion regarding the argument put forth by Access Gas is warranted, and has therefore included the issue on the Issues List.**

FEI's report titled "FEI Cost Estimate to Add Functionality to Calculate Midstream Cost Revenue Account (MCRA) Impact of Early Cancellations," was submitted to all participants in the sixth Customer Choice AGM and filed with the Commission on December 23, 2015. The report could also be discussed when this issue is deliberated if the AGM attendees feel discussion is warranted. While the report is prescriptive in how FEI envisions the information technology functionality being implemented, other parties may wish to, and are welcome to, bring forth proposals as to the procedures and rules for the potential functionality.

### 3.0 EXCLUDED ISSUES

The Panel has not included seven of the issues raised on the Issues List, for the reasons outlined below.

#### 3.1 Limitation of changing the customer's rate only on the anniversary date and different products and service offerings – Bill Ready Billing Capability

By letter dated March 27, 2015, Just Energy submits the above noted issues for discussion during the AGM. Just Energy "submits that the ability to offer different products to customers, such as, a seasonal product, variable rate products, flat bill products (Fixed rate per month instead of per GJ), and other products [that are currently limited due to the limitations of the ESM] could significantly benefit customers and provide additional options for those wishing to participate in the Customer Choice program. It remains our opinion that consumers in BC continue to be disadvantaged by the limitations of the ESM products and service offerings."<sup>15</sup> Just Energy references the proposal to review the ESM as rationale for raising this issue.

FEI opposes the inclusion of these issues on the basis that the proposals are inconsistent with the ESM and "the AGM agenda topics [should] be limited to discussing enhancements and improvements to the existing Program model."<sup>16</sup>

### Commission determination

The Panel finds that Just Energy's proposals are incompatible with the ESM. The potential for a review of the ESM is included on the Issues List, as explained in Section 2.2. The Panel considers it premature to discuss proposals requiring a change to the ESM prior to determining whether a review of the ESM is warranted. **As such, the Panel has not included these issues on the Issues List.**

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<sup>15</sup> Exhibit C3-2, p. 2.

<sup>16</sup> Exhibit B-3, Appendix A, p. 7.

### 3.2 On-Bill Financing – Pay-As-You-Save program

By letter dated March 27, 2015, Just Energy requests an update and presentation by FEI on the On-Bill Financing/Pay-As-You-Save program at the AGM.<sup>17</sup> This program is known as the On-Bill Financing (OBF) program and for clarity the Panel will refer to it as such.

BCOAPO and FEI oppose the inclusion of this issue on the Issues List.

By letter dated April 10, 2015, BCOAPO states: “The Commission ordered in A-4-14 in the Customer Choice Program Sixth AGM that an update on the PAYS [OBF] program was not warranted as the program is ‘currently operational and completely independent of the Customer Choice program.’ BCOAPO is of the view that there remains no reason to include this issue as a topic for discussion at the AGM.”<sup>18</sup>

By letter dated April 10, 2015, FEI notes the OBF “program is entirely independent of Customer Choice.”<sup>19</sup> As such, FEI is of the position that a presentation on the program at the AGM is inappropriate. FEI provides contact information for the appropriate person at FEI should Just Energy, or any other party, wish to obtain further information on the OBF program.

#### Commission determination

On May 26, 2014 by Order A-4-14, the Commission noted the OBF program is “completely independent of the Customer Choice program.”<sup>20</sup> **The Panel determines this issue does not warrant discussion during the AGM on the basis that the OBF program is completely independent of the Customer Choice program.**

The Panel respectfully requests that Just Energy refrain from requesting information on the OBF program as part of the Customer Choice Annual General Meeting proceeding going forward, unless circumstances change and the OBF program gains direct relevance to the Customer Choice program.

### 3.3 Access to the bill

By letter dated March 27, 2015, Just Energy raises the issue of “access to the bill,” requesting the “ability to bill other products and services on the bill: for example energy efficiency products and services such as Smart thermostats.”<sup>21</sup>

Gas marketers raised the access to the bill issue (then referred to as “additional bill line item”) during the 2009 Customer Choice Program Summary and Recommendations proceeding. Despite strong support by Summitt Energy and Just Energy, the Commission did not support the use of the Terasen Gas Inc. (now FEI) invoice to market or collect monies for non-utility or non-gas items.<sup>22</sup>

Just Energy raised the access to the bill/additional bill line item issue during the 2010 Customer Choice Program Summary and Recommendations proceeding. Upon reviewing the submissions on the issue, the Commission concluded that an additional bill line item was not warranted at the time for the following reasons: the need to

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<sup>17</sup> Exhibit C3-2.

<sup>18</sup> Exhibit C5-3, p. 1.

<sup>19</sup> Exhibit B-3, Appendix A, p. 1.

<sup>20</sup> Commission Order A-4-14, Appendix B, p. 2.

<sup>21</sup> Exhibit C3-2, p. 2.

<sup>22</sup> Commission Order A-3-10, Appendix A, p. 9.

maintain separation between the utility and the gas marketer companies, which might be confused by the utility billing for gas marketers' non-gas commodity products; and, it would be inappropriate for the utility to potentially be required to undertake collections activity on items owing to the gas marketing company, or for the customer's credit with the utility to be impacted due to a cost owing for a service other than commodity to the gas marketing company.<sup>23</sup>

During the fourth Customer Choice Annual General Meeting, the issue was again deliberated, this time in the context of the government directed OBF program. At the AGM, in response to this issue, Commission staff noted: "If [OBF] is going to have the ability for other people to have access to the utility bill, then [the gas marketers'] argument [for additional bill line items] has quite a bit of weight at that time, saying, 'and so should we.' But we don't know that yet, and in fact we're hearing that maybe it's the opposite of that."<sup>24</sup>

The OBF program criteria and terms and conditions, which the Commission approved by Orders G-163-12 and G-226-13, do not allow third-party access to the utility's bill.

Just Energy again raised the access to the bill/additional line item issue during the sixth Customer Choice Annual General Meeting, requesting the ability to bill other products and services on the bill.<sup>25</sup>

In response, the Commission stated:

The Commission's decisions on this issue, as first set out in Order A-3-10 and again in Order A-9-11, denying the request for additional bill line items are definitive in addressing this issue. If third party access to the utility bill had materialized under the [OBF] program, the Commission may have considered including this issue for discussion during the 2013 AGM proceeding on the basis of a change in circumstance. However, there has been no change in circumstance since the Commission's determinations on the additional line bill items issue in 2010 and 2011; as such, this issue does not warrant discussion during this proceeding.<sup>26</sup>

BCOAPO is of the view that access to the bill "would have a real potential to cause customer confusion, and lead to an increase in complaints. This issue has already been reviewed by the Commission in 2010 and should not be reopened at this time."<sup>27</sup>

FEI "continues to strongly oppose providing Gas Marketers with an additional line on the Utility invoice to bill for other product offerings" for reasons similar to those noted by the Commission in the aforementioned Reasons for Decision to Order A-9-11.<sup>28</sup> In addition, FEI notes this proposal would result in "incremental costs to the program."<sup>29</sup> Finally, FEI states "there have been no material changes in circumstances that warrant further review in regard to allowing Gas Marketers access to the FEI bill to charge for third-party products and services."<sup>30</sup>

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<sup>23</sup> Commission Order A-9-11, Reasons for Decision, p. 19.

<sup>24</sup> Customer Choice Fourth Annual General Meeting, Transcript, Volume 1, p. 107, lines 7 to 23.

<sup>25</sup> Customer Choice Sixth Annual General Meeting, Exhibit C3-2, p. 2.

<sup>26</sup> Commission Order A-4-14, Appendix B, p. 3.

<sup>27</sup> Exhibit C5-3, p. 2.

<sup>28</sup> Exhibit B-3, Appendix A, pp. 1-2.

<sup>29</sup> Ibid., p. 2.

<sup>30</sup> Ibid.

### Commission determination

The Commission's view on this matter, as explained in Orders A-3-10 and A-9-11, and re-iterated in Order A-4-14, is definitive and consistent. **Given that circumstances have not changed since the Commission's decision on this matter during the sixth AGM, the Panel determines this issue does not warrant discussion during the AGM, for the same reasons noted in Appendix B to Order A-4-14.**

The Panel respectfully requests that in the future Just Energy refrain from raising the access to bill/additional line item issue again, unless there is a significant change in circumstance that would reasonably warrant the Panel's consideration on this matter.

### 3.4 Evergreen provision

The discontinued evergreen (or automatic renewal) provision on a natural gas marketing contract allowed the gas marketing company to re-enroll a customer for a 12 month period at the same rate as in the current contract if no contact was made by the customer within the allotted timeframe after receiving renewal notice from the gas marketer.

During the 2010 Customer Choice Program Summary and Recommendations proceeding, Terasen Gas Inc. (now FEI) proposed to phase out evergreen contracts for the following reasons: "evergreen contracts are inconsistent with consumer protection goals, are often perceived as a deceptive business practice, and can necessitate costly manual corrections in Terasen Gas back office."<sup>31</sup>

Just Energy opposed the discontinuance or grandfathering of existing evergreen renewals and felt renewal should be effortless on the part of the customer.<sup>32</sup>

BCOAPO submitted that to "... legally bind customers to extensions, without turning their minds to whether or not they wish to continue their arrangements, is repugnant and has attracted well-deserved public criticism. It is a feature which has contributed to the well-founded controversy surrounding this program. It is time for it to end, immediately and with no exceptions."<sup>33</sup>

By Order A-9-11, the Commission determined:

...the Evergreen Provision shall be discontinued with no circumstances warranting grandfathering of the provision. The Commission expressed concerns over the evergreen provision in the past and those concerns remain; particularly the burden of proof with receipt of the renewal package and whether or not it was sent, received, or reviewed by the appropriate person prior to the contract being evergreened ... With the elimination of the evergreen clause, the Commission's intent is to promote a more reputable sales model, where gas marketers promote their business to customers, and allow the customers to choose their product.<sup>34</sup>

By letter dated March 27, 2015, Just Energy proposes: "the possibility of re-establishing this [evergreen] renewal option to ensure customers don't miss out on the benefits of the program."<sup>35</sup>

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<sup>31</sup> Commission Order A-9-11, Reasons for Decision, p. 12.

<sup>32</sup> Ibid., pp. 12-13.

<sup>33</sup> Ibid., p.13.

<sup>34</sup> Ibid.

<sup>35</sup> Exhibit C3-2, p. 1.

By letter dated March 27, 2015, Access Gas states: "Automatic renewal was eliminated due to the fundamental change in natural gas prices following the advent of shale gas. The higher priced contracts written prior to 2010 have now expired and conditions under which effortless renewal are permitted should be revisited."<sup>36</sup>

BCOAPO is "strongly opposed to this topic being considered. BCOAPO is of the view that reintroducing automatic renewals would be a step back in consumer protection."<sup>37</sup>

FEI "maintains their position that automatic renewals are not in the best interests of consumers, and as such, sees no benefit to revisiting this topic ... Re-allowing the evergreen provision would constitute a regression from our endeavor to ensure adequate customer protection."<sup>38</sup>

### **Commission determination**

**The Panel agrees with BCOAPO and FEI that reintroducing evergreen renewals would be a step backward in consumer protection and on this basis determines the issue does not warrant discussion during the AGM.**

#### **3.5 Remove 24 hour wait period for Third Party Verification (TPV) call**

During the second Customer Choice Annual General Meeting, Commission staff "suggested a change to the timing when a TPV call can be conducted as a result of reviewing a number of TPVs for dispute contracts since the inception of the TPV in 2007. The Commission suggested that the contract signing process and the Third Party Verification should be separate so that the customer has a full opportunity to review the contract before confirming their understanding of the key elements."<sup>39</sup>

Following submissions on the matter, by Order A-3-10, the Commission determined that the TPV call must not occur until 24 hours after the customer executes the contract, and in order to complete the sale, must occur within four business days of the customer executing the contract. For convenience, the TPV call may be initiated by either the gas marketer or the customer within that window.

The Commission provided the following rationale for its decision to implement the 24 hour waiting period:

The Commission recognizes the submissions that a 24 hour delay in initiating the TPV call may be both inconvenient and costly for gas marketers. In deliberating this item, the Commission considers the submissions of the parties, as well as the intent and spirit of the Code of Conduct. The Commission notes that this proposed change adds to the operational complexity for gas marketers and also would tend to balance the interests of the gas marketer and the customer on whom an unsolicited sales call is made; as a result, the Commission placed reduced weight on the arguments of the gas marketers in this instance. The Commission agrees with Terasen Gas' submission that the execution of a contract is a potential investment of several thousands of dollars; the Commission is also of the view that in order to ensure a sale is made and confirmed, the salesperson is charged with presenting the customer with a compelling sales presentation and offer which will still be valuable to the customer at the time the TPV call is conducted.

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<sup>36</sup> Exhibit C1-2, p. 2

<sup>37</sup> Exhibit C5-3, p.2.

<sup>38</sup> Exhibit B-3, Appendix A, p. 4.

<sup>39</sup> Commission Order A-3-10, Appendix A, p. 6.

The Commission believes that the addition of this requirement will appropriately change the current marketing model to afford the customer with the opportunity to pursue a product which the customer considers valuable, in accordance with the Code of Conduct. The Code of Conduct requires the salesperson, and any person promoting the offer by the gas marketer, to give the customer all of the essential information in order for the customer to make an informed decision. The intent of the TPV is to confirm the points that the salesperson has clearly and accurately addressed, and is currently not permitted to occur before the customer has had an opportunity to review the contract and supporting information, such as the Customer Choice Standard Information Booklet. Conducting the TPV call immediately at the conclusion of the sales presentation generally does not afford this opportunity. The Commission is of the view that providing this 24 hour delay ensures that the customer is not completing the TPV before having the opportunity to familiarize themselves with the offer. This will also eliminate the possibility of a person feeling undue pressure to complete the sale due to the presence of the salesperson and pace of the offer. The Commission expects that the gas marketer will leave with the customer the contact information of the gas marketer in the event that the marketer is unable to reach the customer to complete the TPV.<sup>40</sup>

The minimum time required between the contract signing and TPV call has remained 24 hours since the requirement was established by Order A-3-10. However, the maximum time allowed has been extended: from 4 business days to 10 calendar days, by Order A-9-11; and from 10 calendar days to 20 calendar days by Order A-10-12. The extensions to the maximum time allowed were provided in response to feedback from gas marketers that they were having difficulty reaching all customers within 4 business days and later 10 calendar days.

During the fourth Customer Choice AGM, Just Energy stated they were able to reach approximately 80 percent of their customers for the TPV call during the allowed time period of 24 hours to 10 calendar days, but proposed to extend the timeline to 45 days to facilitate reaching the remaining 20 percent of customers.<sup>41</sup> Access Gas stated they informally believed they were able to reach 75– percent of customers during the allowed time period.<sup>42</sup> The parties discussed the proposal to further extend the timeline and agreed 45 days was too long; 20 calendar days was agreed to be sufficient.<sup>43</sup>

By letter dated March 27, 2015, Access Gas submits the requirement to wait 24 hours to perform the TPV leads to numerous attempts to reach the customer; is perceived as a major annoyance to the customer; and results in material costs to the gas marketer, which are then passed on residential customers in the form of higher rates. According to Access Gas “a time of sale TPV confirms the sales pitch did not contain messaging that would be contracted by the TPV script moments later but may be forgotten a week after the sales call.”<sup>44</sup>

In their March 27, 2015 submissions, Direct Energy and Just Energy raise the same points as Access Gas, outlined above, regarding the proposal to remove the 24 hour wait period for the TPV call. In addition, Direct Energy notes the 24 hour waiting period leads to “sales attrition rates to Gas Marketers when they are unable to reach the specific contracting customer once the 24 hour restriction has elapsed.”<sup>45</sup> Direct Energy proposes the re-introduction of a time of sale TPV on a trial basis.

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<sup>40</sup> Commission Order A-3-10, Appendix A, p. 7.

<sup>41</sup> Customer Choice Fourth Annual General Meeting, Transcript, Volume 1, p. 142.

<sup>42</sup> Ibid., p. 146.

<sup>43</sup> Ibid., pp. 142–147.

<sup>44</sup> Exhibit C1-2, p. 1.

<sup>45</sup> Exhibit C2-2, p. 2.

Just Energy argues “in this day and age people expect / require the ability to easily, conveniently and quickly complete transactions; the 24 hour wait period prohibits this from occurring.”<sup>46</sup> According to Just Energy, the wait period does not provide additional consumer protection.

FEI believes the issue is appropriate for discussion during the AGM.<sup>47</sup>

BCOAPO opposes the inclusion of this proposal on the Issues List. According to BCOAPO: “The Third Party Verification call and 24 hour waiting period is a consumer protection measure to guard against improper retailer conduct. Protections should not be reduced at the retailers’ request, whether or not retailers see it as impacting the purpose of the call. BCOAPO sees this as a step backwards, lessening consumer protection from egregious retailer conduct.”<sup>48</sup>

### Commission determination

While the Commission, in past decisions, has been amenable to extending the maximum time allowed for conducting a TPV call, at the gas marketers’ request, this Panel does not consider a reduction in the minimum time to be warranted. Two of the three gas marketers raising this issue estimated at the AGM in 2012 that they were able to reach approximately 75–80 percent of their customers between 24 hours and 10 calendar days in order to conduct the TPV call. The Panel notes this timeframe has been further extended to 20 calendar days to support gas marketers in their attempts to reach customers during the required timeframe. Further, the Panel agrees with BCOAPO that removing this requirement would be a step backward in consumer protection. The Commission’s position on this issue, as outlined in Appendix A to Order A-3-10 and copied above, stands. **The Panel determines this issue does not warrant discussion during the AGM and has not included this proposal on the Issues List.**

### 3.6 Voice contracting

Under the current Code of Conduct for Gas Marketers, gas marketers are able to renew customers via voice contract; however, gas marketers may not use voice contracting for new agreements. Access Gas, Direct Energy and Just Energy raise the issue of voice contracting for new agreements for discussion during the AGM.

In its March 27, 2015 submission, Access Gas states voice contracting should be allowed for new contracts following the initial introduction of Customer Choice to Vancouver Island, Whistler and the Sunshine Coast. Access Gas wishes to “develop standardized rules and scripting that would permit voice contracting for new customers.”<sup>49</sup>

In its March 27, 2015 submission, Direct Energy notes this issue was raised during the third Customer Choice AGM, held on September 8, 2010 and references relevant points made during the AGM. At the meeting, Commission staff agreed with gas marketers that there are some benefits to voice contracting, over door-to-door sales, for example, less opportunity for coercion, and suggested the gas marketers “band together to basically create an application to the Commission to expand this [voice contracting]... We would think that the application would probably run through a hearing process on it.”<sup>50</sup> Commission staff also surmised that perhaps

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<sup>46</sup> Exhibit C3-2, p. 2.

<sup>47</sup> Exhibit B-3, p. 2.

<sup>48</sup> Exhibit C5-3, p. 1.

<sup>49</sup> Exhibit C2-2, p. 2.

<sup>50</sup> Customer Choice Third Annual General Meeting, Transcript, Volume 1, pp. 155–156.

voice contracting for new agreements, instead of door-to-door contracting, could be used in Whistler when the program becomes available in the service area.<sup>51</sup>

Direct Energy notes no application on the matter has been brought forward to the Commission. Direct Energy “believes the current AGM provides the appropriate opportunity to review this matter in its entirety.”<sup>52</sup>

Just Energy states voice contracting for new agreements “should be implemented when the Vancouver Island and Whistler markets are open to the Customer Choice program.”<sup>53</sup>

### **Commission determination**

As noted by Direct Energy, the Commission considered the proposal to introduce voice contracting for new agreements during the 2010 Customer Choice AGM. Following the AGM, the Commission determined that: “if gas marketers wish to pursue this item they must collectively submit a formal application for the Commission as it is appropriate to hold a separate procedural review, including an opportunity for public participation.”<sup>54</sup>

**Given the Commission’s previous determination that in order to pursue voice contracting for new agreements gas marketers must collectively submit a formal application on the matter, this Panel finds it is inappropriate to deal with this issue as part of the AGM proceeding. The Panel finds there is no reason to vary the direction provided in 2010 to proceed by way of formal application and this item has not be included on the Issues List.**

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<sup>51</sup> Ibid., p. 156.

<sup>52</sup> Exhibit C2-2, p. 2.

<sup>53</sup> Exhibit C3-2, p.2.

<sup>54</sup> Commission Order A-9-11, Reasons for Decision, p. 22.

FortisBC Energy Inc.  
Customer Choice Program Seventh Annual General Meeting

**CUSTOMER CHOICE PROGRAM  
SEVENTH ANNUAL GENERAL MEETING  
AGENDA**

Date: June 9, 2015

Time: 9:00 a.m. to 4:00 p.m.

Location: Commission Hearing Room, 12<sup>th</sup> floor 1125 Howe Street, Vancouver BC

Moderator: To be determined

<b>Item for discussion</b>	<b>Presented by</b>
1. Update on customer complaints	Commission staff
2. Customer protection education activities	FortisBC
3. Expansion of the Customer Choice Program to Vancouver Island and Whistler	FortisBC and Commission staff
4. Review of transaction fees charges to gas marketers	FortisBC
5. Code of Conduct for Gas Marketers	Commission staff
6. Third Party Verification (TPV) enhancement	Direct Energy
7. Anniversary drop rule	Access Gas
8. Cost recovery, fees and mechanisms – plan and timing to review	Commission staff
9. Potential for review of Essential Services Model	Commission staff
10. Marketing disputes	BCOAPO