



July 13, 2020

Sent via email

**Letter L-45-20**



**Re: Customer Choice Program – [REDACTED] /Just Energy Limited Partnership**

**Dear [REDACTED]:**

The British Columbia Utilities Commission (BCUC) is in receipt of your Customer Choice disputes and has considered the evidence relating to this matter. The BCUC's findings are outlined below.

**Nature of the dispute**

The customer filed the dispute on the basis of misrepresentation of rate.

**Evidence and other considerations**

The contract was signed on January 28, 2016 and the customer filed the dispute on February 12, 2020.

According to the customer, the sales representative "falsely and deceptively mislead our office manager that they were part of Fortis BC and that they were offering pricing discounts to commercial customers."

Just Energy Limited Partnership (Just Energy) proposed to resolve the dispute by cancelling the contract effective on the next anniversary date and waiving the early exit fees associated with the original agreement. [REDACTED] did not respond to confirm the acceptance of this offer.

Just Energy considers the original agreement valid and binding.

As the customer and gas marketer have not resolved the dispute directly, the dispute has proceeded to adjudication.

**BCUC determination**

There is insufficient evidence to support the customer's statement that the sales representative misrepresented the rate. The agreement is compliant with the requirements under the Code of Conduct for Gas Marketers. Just Energy proposed to waive the early exit fees associated with the termination of the original agreement on the next anniversary date or reduce their fees.

The Code of Conduct states that The Third-Party Verification (TPV) call is not required if the consumer executes the Agreement with no contact by a salesperson, through any means (e.g. in-person, telephone, online), at the time of contracting. In this case, a salesperson was onsite, so therefore the TPV call is required. Just Energy's "Re-Contract" call provided for the contract renewal was not in compliance with the TPV call script. Items that were not verified within the call include:

- Confirmation that the customer has been provided with a copy of the signed agreement;
- Just Energy's independence from FortisBC or the government;
- Customer's understanding that entering into the agreement is entirely voluntary;
- Customer's agreement to a bid price of \$4.78 for a term of five years; and
- Customer has the right to cancel the agreement without penalty within 10 days.

Further, the "Notice of Appointment of Marketer" for the 2016 renewal is unsigned by the customer.

On this basis, the BCUC determines the renewal contract shall be cancelled as of the inception date.

The customer will return to FortisBC for their natural gas supply and Just Energy will reimburse the customer for the difference between Just Energy's fixed natural gas rate and FortisBC's variable natural gas rate for the period the renewal contract was in effect. Please note it may take one to three billing cycles for the change to appear on the customer's bill; a credit will be posted at that time.

Sincerely,

*Original signed by:*

Marija Tresoglavic  
Acting Commission Secretary

DD/aci  
Enclosure

cc: Mr. Erick Wesby  
Corporate & Consumer Specialist – US East  
Jus Energy Limited Partnership  
[ewestby@justenergy.com](mailto:ewestby@justenergy.com)

Ms. Kyla Shea  
Resolution Management Specialist  
Jus Energy Limited Partnership  
[kshea@justenergy.com](mailto:kshea@justenergy.com)

*An application for reconsideration of this determination can be made following the guidelines enclosed.*



# **Customer Choice Program**

## **Dispute Reconsideration Guidelines**

**January 2012**

British Columbia Utilities Commission  
Sixth Floor, 900 Howe Street, Box 250  
Vancouver, British Columbia, Canada V6Z 2N3

Telephone (604) 660-4700; Facsimile (604) 660-1102  
B.C. Toll Free: 1-800-663-1385

Internet Email: [customer.choice@bcuc.com](mailto:customer.choice@bcuc.com)  
Website: <http://www.bcuc.com>

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## CUSTOMER CHOICE PROGRAM

### Dispute Reconsideration Guidelines

#### 1.0 INTRODUCTION

If a Customer or a Gas Marketer believes the Commission has made an error in the course of making a decision on a dispute, either party may raise the issue for further review by applying to the Commission for reconsideration. The Commission will not reconsider a dispute decision on the basis that the parties are unhappy with the decision. For a reconsideration to proceed, the applicant is required to establish a *prima facie* case (a case that until it is rebutted establishes that an error has been made) that reconsideration is warranted.

The following is an outline of the reconsideration process for the Customer Choice Program. This outline is used by the Commission to determine whether to accept an application for reconsideration and how to proceed with that reconsideration.

#### 2.0 STEPS IN THE DISPUTE RECONSIDERATION PROCESS

##### 2.1 Submit a Dispute

Applications for reconsideration must be received by the Commission in writing within 30 days of the date of the disputed decision. An application for reconsideration must:

- identify the disputed decision to be reconsidered including the dispute number, FortisBC account number and gas marketer's name;
- state the legal or factual grounds upon which the decision should be changed;
- state the applicant's desired outcome;
- contain the name, address and telephone number of the applicant or the applicant's representative; and
- be signed by the applicant or the applicant's representative.

Applications should be addressed to Customer Choice Program and can be submitted via email, mail or fax to:

- Email: [customer.choice@bcuc.com](mailto:customer.choice@bcuc.com)
- Fax: (604) 660-1102
- Mail: Sixth Floor - 900 Howe Street, Box 250, Vancouver, BC V6Z 2N3

Once the Commission receives an application it will conduct an initial review to determine whether the application shall proceed.

## 2.2 The Reconsideration Process

The Commission considers written submissions from the parties involved in a dispute in two phases of the reconsideration process. These two phases are outlined in the sections below.

### 2.2.1 Phase I – Initial Review

In the interest of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission. The first phase is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be reconsideration by the Commission?
- If there is to be reconsideration, should the Commission allow new evidence?
- If there is to be reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

Following the Commission's review of the application, the Commission issues a notice to the other party involved in the disputed decision requesting them to submit a response to the application for reconsideration by addressing those questions set out in the notice. Upon receipt of the other party's response, the Commission asks the applicant to provide reply comments to the response received from the other party.

After the first phase evidence has been received, the Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- Has the Commission made an error in fact or law?
- Has there been a fundamental change in circumstances or facts since the initial decision?
- Is there new evidence or further information that was not taken into consideration in adjudicating the initial decision?

In addition, the Commission may exercise its discretion and decide to undertake reconsideration of a decision whenever it deems there is just cause. If the Commission decides that a request for reconsideration should proceed, the application moves on to Phase II of the process. If the Commission decides that reconsideration should not proceed, the Commission will provide all parties with written notice of its decision.

### 2.2.2 Phase II – Commission Reconsideration

If the Commission decides an application for reconsideration should proceed, the Commission issues a Phase II Reconsideration Notice to the Customer and the Gas Marketer outlining the issues to be reconsidered and whether new evidence is allowed and setting the schedule for submissions. In moving to Phase II of the reconsideration process, the Commission will consider written arguments addressing the substance of the issues approved for reconsideration. When submitting written arguments, the parties must copy each other and must respond on or before the dates set out in the Phase II Reconsideration Notice.

The Commission bases its decision on the application on the submitted arguments.

### **3.0 ALTERNATIVES TO THE RECONSIDERATION PROCESS**

In addition to the Commission's reconsideration process, there are two alternatives available to parties who wish to challenge a Commission decision or the fairness of the process used by the Commission to arrive at the decision:

- File for leave to Appeal the Commission's decision with the Court of Appeal of British Columbia
- File a complaint with the Office of the Ombudsperson of BC

These options are discussed in more detail below.

#### **3.1 File for Leave to Appeal to the Court of Appeal of BC**

The *Utilities Commission Act* provides a second alternative for challenging a Commission decision. This alternative is by way of the Court of Appeal of British Columbia. The Court of Appeal will consider only alleged errors of law or jurisdiction.

An application to obtain leave to appeal to the Court of Appeal must be launched within 30 days of the Commission issuing its Decision. Applicants must first obtain the court's leave for the appeal before commencing the actual appeal. The court will sometimes take into consideration as a factor in granting leave whether or not the party applying has exhausted its other remedies. Therefore, the party applying for leave may also want to apply for reconsideration by the Commission at the same time.

If a participant chooses to pursue an appeal, the procedures may be quite complex and formal. Normally, lawyers become involved at this stage, as their knowledge of court procedures and legal arguments tends to be very useful. It is not necessary, however, to hire a lawyer in order to make an appeal to the Court of Appeal.

#### **3.2 The Office of the Ombudsperson of BC**

If a customer is not satisfied with the Commission's handling of a complaint, he or she may contact the provincial Ombudsperson's Office to review the process used. The BC Ombudsperson reviews the Commission's processes, including the process for resolving complaints. The BC Ombudsperson can recommend reconsideration of a matter because of an error in procedure, but cannot overturn a Commission decision.