



October 26, 2020

Sent via email

**Letter L-63-20**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Re: Customer Choice Program – [REDACTED]/Access Gas Services Inc.**

Dear [REDACTED]:

The British Columbia Utilities Commission (BCUC) has received your Customer Choice dispute and has considered the evidence relating to this matter. The BCUC's findings are outlined below.

Nature of the dispute

The Customer [REDACTED] filed the dispute on the basis of a misrepresentation of the terms of the Natural Gas Agreement (Agreement). Specifically, the Customer raises three issues in support of its position that the Agreement should be terminated:

1. Access Gas Services Inc. (Access Gas or Gas Marketer) breached Article 15 of the Code of Conduct for Gas Marketers (Code of Conduct), which states, in part, that where a "language or comprehension issue is likely to impede the Consumer's ability to fully understand the offer and the transactions, the Salesperson shall not execute the Consumer Agreement(s) and/or the Third Party Verification [TPV]";
2. The signatory, [REDACTED], did not have the authority to execute an agreement on the business's behalf; and
3. The TPV call did not comply with the Code of Conduct.

Evidence and other considerations

The Agreement, dated April 25, 2019, came into effect July 1, 2019. The Customer filed the dispute on August 5, 2020.

Access Gas advised the Customer that he may cancel the Agreement as per the terms and conditions on the next anniversary date, July 1, 2020, with discounted early exit fees. Access Gas further offered, as an alternative to cancelling, a reduced commodity rate of \$4.39 per GJ effective on the next anniversary date. The Customer declined both offers.

Access Gas considers the Agreement valid and binding.

During the TPV call, which was recorded and submitted as evidence in the dispute, [REDACTED] confirmed that he:

- is the owner of [REDACTED];
- has authority to bind agreements for his organization;
- has been provided with a copy of the signed agreement;
- agreed to a price of \$5.89 for a term of five years;
- may not save money by entering into the Agreement; and
- has the right to cancel without penalty within 10 days.

The Customer submits that the TPV demonstrates [REDACTED] difficulty with the English language and therefore the salesperson should not have executed the Agreement.

The Customer further submits that the Agreement is null and void because at the time [REDACTED] signed the Agreement, he was not an officer or director for [REDACTED]. and therefore had no ability to bind the company. As evidence, the Customer submitted a certified copy of the Notice of Articles of [REDACTED] dated January 24, 2020. A Notice of Articles is a document prepared in accordance with the BC *Business Corporations Act* and is a general overview, at a point in time, of a company's share structure, who are the current directors of the company, and the company's registered and records office. A Notice of Articles does not list the officers of a company. According to the Notice of Articles, [REDACTED] was not a director of the company on January 24, 2020.

Finally, the Customer submits that the TPV demonstrates that the salesperson did not discuss penalties or early exit fees. In particular, the agent did not mention the penalties or early exit fees when asking [REDACTED] to confirm his understanding of the cancellation provisions.

As the matter has not been resolved directly between the Customer and the Gas Marketer, the BCUC has reviewed, investigated and adjudicated the matter.

#### BCUC determination

This determination is based on a review of the evidence submitted in this dispute.

First, there is insufficient evidence to suggest that Article 15 of the Code of Conduct was breached during the execution of the Agreement or the TPV call. In particular, there is no evidence that Access Gas should have had concerns that [REDACTED] language or comprehension was likely to impede his ability to fully understand the offer and the transactions. During the TPV call, [REDACTED] confirms his authority to bind agreements for the organization by stating that he is the owner, and confirms his understanding of the rate, length of term, the cancellation terms and that he may not save money by entering into the Agreement.

Second, there is no evidence that [REDACTED] did not have the ability to bind [REDACTED] when he signed the Agreement. The Notice of Articles, dated January 24, 2020, submitted by the Customer is not helpful to the current matter because [REDACTED] signed the agreement on April 25, 2019. Further, it is clear from the evidence that he held himself out to the Gas Marketer as having the ostensible or apparent authority to enter into the agreement. On the Agreement and the Notice of Appointment of Marketer, which was provided by the Gas Marketer as evidence in the dispute, the signatory's title is listed as "owner." There is nothing in the evidence that would suggest that the Gas Marketer should have made further inquiries before engaging with [REDACTED] and entering into the Agreement.

Finally, there is insufficient evidence that the salesperson misrepresented the terms of the Agreement during the TPV. Article 33 of the Code of Conduct sets out the topics that a TPV call must cover for commercial consumers. Item 7 requires “[c]onfirmation that the customer understands the right to cancel without penalty during the 10-day cancellation period, or if the customer waived the right, confirmation that the customer has done so.” During the TPV, [REDACTED] confirms that he understands his “right to cancel this agreement without penalty within 10 days”, which complies with the requirements of the Code.

For these reasons, the BCUC finds the Agreement valid and binding.

Access Gas will remain the natural gas provider. The Customer has the option to cancel the agreement prior to the end of term in accordance with the Agreement terms and conditions. The Customer may also wish to contact Access Gas to inquire whether the resolution proposed by the Gas Marketer is still available.

Sincerely,

*Original signed by:*

Marija Tresoglavic  
Acting Commission Secretary

DD/ae  
Enclosure

cc: Ms. Megan Sedawie  
Unbundling Supervisor  
Access Gas Services Inc.  
megans@accessgas.com

Mr. Charlie Barrotta  
Vice President  
Access Gas Services Inc.  
charlie.barrotta@accessgas.com

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