



February 17, 2021

Sent via email

Letter L-4-21



Re: Customer Choice Program – Dispute Log #64514 (Acct [REDACTED])/Access Gas Services Inc.

Dear [REDACTED]

The British Columbia Utilities Commission (BCUC) is in receipt of 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 filed the dispute on the basis of disputed exit fees invoiced by Access Gas Services Inc. (Access Gas).

Evidence and other considerations

The Agreement, dated November 29, 2018, came into effect January 1, 2019. The Customer filed the dispute on November 16, 2020.

According to the Customer's owner, [REDACTED], an Access Gas salesperson informed him that the Customer was able to cancel its contract without penalty after one year. Further, when he spoke to Access Gas to close the account because he had sold the business, the salesperson informed him that he had to pay out the remainder of the contract.

Access Gas advised the Customer that the exit fees have been quoted to cover the loss surrounding the amount of natural gas that they, Access Gas, committed to on the Customer's behalf for the time period from the account closure (September 30, 2020) to the intended end of the Agreement (February 1, 2022).

Access Gas considers the agreement valid and binding.

Access Gas stated, "[s]ince Access can no longer provide your fixed rate as a result of your closed FortisBC account, exit fees are applicable and due immediately. These exit fees are a result of the natural gas that Access purchased on your behalf to fulfill your term. A full breakdown of these exit fees was emailed to you by our Customer Service Team on November 16, 2020. Please note that if these are not paid by December 1, 2020, your Agreement will continue through Access' collections process."

During the Third-Party Verification (TPV) call, which was recorded and provided 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 per GJ for a term of three years;
- may or may not save money in the Customer Choice program; and
- has the right to cancel without penalty within 10 days.

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

There is insufficient evidence to support the Customer's statement that Access Gas misrepresented their rates or cancellation policy. During the TPV call, the signatory confirmed his understanding of the key points of the Agreement, including the term and rate, that he may not save money by entering into the Agreement and the 10-day cancellation rights. The Agreement and TPV call are compliant with the requirements under the Code of Conduct for Gas Marketers.

The Customer's owner states that he was informed he could end the contract after one year at any time without penalty, and that he was assured he would save money. He signed the Agreement, however, which contains a clear and concise Cancellation Clause on the first page, the contents of which are inconsistent with what he says he was told. In particular, the Cancellation Clause on the first page refers to the possibility of Liquidated Damages if the Customer terminates the Agreement before the End Date.

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

As the Customer cancelled the account prior to the end of term, in accordance with the Agreement terms and conditions, an early exit fee is applicable. However, while Access Gas has the right to require and enforce an early exit fee under the Agreement, whether it chooses to waive or exercise that right is entirely up to Access Gas. In the circumstances, the Customer may wish to try to come to a settlement with Access Gas directly.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

AS/jo
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.



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
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
- 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.