



March 10, 2021

Sent via email

Letter L-5-21

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

Re: Customer Choice Program – Dispute #39036 (Acct [REDACTED])/Access Gas Services Inc.

Dear [REDACTED]:

The British Columbia Utilities Commission (BCUC) has received a Customer Choice dispute from you, on behalf of [REDACTED] the account holder (Customer). The BCUC has considered the evidence relating to this matter and outlines its findings below.

Nature of the dispute

The Customer filed the dispute on the basis that the contract was not cancelled as agreed.

Evidence and other considerations

The contract, dated March 27, 2019, came into effect on October 1, 2020 (Agreement). The Customer filed the dispute on November 17, 2020.

According to you, you signed a five-year natural gas agreement in 2015 and that when you were “three years into contract another salesman came and told that my contract was expiring soon, and I should renew it. I was tricked into signing another contract when the expiry date was still approximately two years away.”

When you signed the Agreement on March 27, 2019, you also signed a form called Spousal / POA Addendum to Natural Gas Agreement, in which you represented that you are legally authorized to enter into the Agreement for the residence on behalf of the Customer.

You also state that in April 2020 you were contacted by another gas company, which prompted you to check the gas prices on a bill from another property and were shocked to see the difference. You state that you immediately called Access Gas to cancel your Agreement and that you were told that it would be cancelled on Oct 1, 2020, and there would be no contract renewal after that. Despite those assurances, you state that the contract “was renewed for another 4 years.”

You provide three reasons why the Agreement should be cancelled: “I was misrepresented by salesperson with lies and wrong information... I am not the accountholder for this account, It is under my husbands name and therefore the contract is invalid... I am unable to pay high bills & exit fees due to my current financial circumstances. [sic]”

Access Gas Services Inc., the Gas Marketer, states that it has no record of any communication from you prior to November 12, 2020. It states that on that date, its customer service representative (CSR) advised you that you could “contact Access at anytime to cancel by paying the applicable exit fee and that the cancellation would take effect on the next anniversary date.”

Access Gas further states that on November 13, 2020, it “offered to reduce [REDACTED] fixed rate or discount the exit fee to cancel the Agreement effective the next anniversary date - October 1, 2021. [REDACTED] declined both offers.”

Access Gas considers the Agreement valid and binding.

During the Third-Party Verification (TPV) call, which was recorded and provided as evidence in the dispute, you confirmed that you:

- Are legally authorized to act on behalf of the account holder;
- Have been provided with a copy of the signed Agreement;
- Agreed to a price of no more than \$5.89 per G/J for a term of five years;
- Understand that you may or may not save money in the Customer Choice program; and
- Has the right to cancel the Agreement 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

First, in the evidence provided, you allege that the salesperson’s lies and misinformation, namely that your original agreement was about to expire, and you should renew it, amount to a misrepresentation regarding the Agreement. Article 28 of the Code of Conduct for Gas Marketers sets out the requirements for renewing agreements. It states that in order to renew an agreement, the renewal package must contain a new Consumer’s Agreement, which shall contain all essential terms of the Offer and complete terms and conditions, and that it must be delivered to the Consumer no less than 90 days prior to the applicable renewal date. Access Gas complied with both requirements and therefore this is not a reason to cancel the Agreement.

Second, you state that even though you signed the Agreement, you are not the account holder and therefore the Agreement is invalid. At the time you signed the Agreement, however, you held yourself out as having the authority to do so on behalf of the Customer. Further, during the TPV call you confirmed your authority to enter into the Agreement. Access Gas was entitled to rely on your assertions and therefore this is not a reason to cancel the Agreement.

Third, you state that you are unable to pay high bills and exit fees due to your current financial circumstances. Regrettably, inability to pay is not a ground on which to cancel the Agreement.

Access Gas will remain the natural gas provider. The Customer has the option to cancel the Agreement prior to the end of the term in accordance with the Agreement’s terms and conditions.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

AS/jb
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.