



ORDER NUMBER
A-4-23

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Easy Energy Inc.
Potential Non-Compliance with the Electronic Third-Party Verification Script for Gas Marketers

BEFORE:
B. A. Magnan, Panel Chair
E. B. Lockhart, Commissioner

on October 3, 2023

ORDER

WHEREAS:

- A. On August 8, 2022, the British Columbia Utilities Commission (BCUC) received a dispute (Dispute) regarding a gas marketing agreement (Agreement) between a residential customer and Easy Energy Inc. (Easy Energy);
- B. Easy Energy is a licensed Gas Marketer located in Surrey, BC, with approximately 19,000 customers and operates as part of the Natural Gas Customer Choice Marketing Program in BC (Customer Choice);
- C. By Order A-5-21 dated October 28, 2021, the BCUC issued Easy Energy a gas marketer licence for the period of November 1, 2021 to October 31, 2022. As a condition of the license, Easy Energy was required to abide by the Rules for Gas Marketers, approved by Order A-12-13 dated October 18, 2013, and the Code of Conduct for Gas Marketers (Code of Conduct), approved by Order A-12-15 dated September 29, 2015. The Code of Conduct requires that Gas Marketers enrol customers on fair and ethical terms;
- D. On January 27, 2023, in accordance with the Customer Choice dispute process, Easy Energy filed with the BCUC its response to the Dispute, along with the Electronic Third-Party Verification (E-TPV) sent to the customer on July 6, 2022 in relation to the Agreement (collectively, Submission);
- E. E-TPV is the form of electronic process, conducted by the Gas Marketer, where, after signing an agreement, a customer is required to verify certain aspects of their enrolment and agreement. Gas Marketers must submit all E-TPV materials to BCUC staff for review and approval prior to commercial distribution and/or use;
- F. As part of the Customer Choice dispute process, BCUC staff reviewed Easy Energy's Submission and noted inconsistencies between the E-TPV sent by Easy Energy to the residential customer and the E-TPV version for residential customers approved by the BCUC on February 28, 2022, by Letter L-3-22;

- G. By Order G-121-23 dated May 26, 2023, the BCUC determined that a public hearing to investigate whether Easy Energy is in breach of the Code of Conduct for Gas Marketers was warranted, and established a regulatory timetable that included public notice and BCUC information requests, with further process to be determined; and
- H. The BCUC has reviewed the evidence in this proceeding and finds the following determinations to be warranted.

NOW THEREFORE for the reasons attached as Appendix A to this Order, the BCUC orders as follows:

1. The public hearing process established by Order G-121-23, dated May 26, 2023, is concluded.
2. Easy Energy is directed to adopt the TPV scripts attached to Letter L-3-22 as soon as practicable.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of October 2023.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

Attachment

Easy Energy Inc.
Potential Non-Compliance with the Electronic Third-Party Verification Script for Gas Marketers

REASONS FOR DECISION

1.0 BACKGROUND

Easy Energy Inc. (Easy Energy) is a licensed Gas Marketer located in Surrey, BC, with approximately 19,000 customers, which operates as part of the Natural Gas Customer Choice Marketing Program in BC (Customer Choice). The Customer Choice program enables direct natural gas sales to low-volume customers. Easy Energy enters into gas supply contracts with residential and commercial consumers who are served by FortisBC Energy Inc. (FEI). FEI delivers the gas to the Easy Energy customers and bills them, on behalf of Easy Energy, at a fixed rate as established, for periods of up to five years, in each customer's Easy Energy agreement.

Pursuant to Article 33 of the Code of Conduct for Gas Marketers,¹ in order to complete a sale to a consumer, a Gas Marketer must conduct a Third Party Verification (TPV). A TPV takes the form of either a digitally recorded phone call or an electronic process. In the latter case, the Gas Marketer sends a website link by email to the consumer to an electronic verification form. In this decision, we refer to the electronic process as Electronic Third Party Verification (E-TPV).

Regardless of the method used by the Gas Marketer, Article 33 of the Code of Conduct establishes that TPVs must follow a standardized script approved by the BCUC. Article 33 also allows Gas Marketers to request amendments to the standardized script by filing the proposed modified TPV script with the BCUC for approval.

On October 28, 2021, the BCUC issued Easy Energy a Gas Marketer licence² for the period of November 1, 2021 to October 31, 2022, which had a number of conditions, including that, "Easy Energy must strictly adhere to the script as outlined in Article 33 of the Code of Conduct for Gas Marketers"³, and that, "Easy Energy must file the updated verification script(s) with the BCUC within 15 days of this order."⁴

On October 29, 2021, Easy Energy filed its four proposed TPV scripts with the BCUC for approval, which included two scripts for commercial customers (one for phone call TPVs and one for E-TPVs) and two scripts for residential customers (one for phone call TPVs and one for E-TPVs).

BCUC staff and Easy Energy discussed possible amendments to the scripts until December 17, 2021. During that period, as changes were implemented, Easy Energy filed two versions of each of the four scripts: version 2.0 and version 2.1.

On February 28, 2022, the BCUC issued Letter L-3-22 approving four modified TPV Scripts applicable to Easy Energy: two TPV Scripts for Commercial Consumers, both version 2.1, and two TPV Scripts for Residential Consumers, both version 2.0.⁵

¹ Order A-12-13, Appendix A.

² Order A-5-21.

³ Ibid., determination 3.h.

⁴ Ibid., determination 3.i.

⁵ Order L-3-22.

On January 24, 2023, the British Columbia Utilities Commission (BCUC) received a Customer Choice dispute (Dispute) regarding a gas marketing contract (Agreement) between a residential customer (Customer) and Easy Energy. The Customer alleged that Easy Energy had misrepresented its rate during its enrolment. Easy Energy and the Customer resolved the Dispute without the need for adjudication by the BCUC.

When a customer and Gas Marketer resolve a dispute, the BCUC reviews the file and then closes the dispute by issuing a letter to both parties on the outcome.⁶ In preparation for issuing the closing letter, the BCUC reviewed the evidence filed by Easy Energy about the Dispute.⁷ During this review, BCUC staff noticed possible non-compliance by Easy Energy with Article 33 of the Code of Conduct – specifically, BCUC staff noted that the E-TPV script electronically signed by the Customer was different from the E-TPV script for Residential Consumers version 2.0 approved by Letter L-3-22.

On May 26, 2023, by Order G-121-23, the BCUC determined that a public hearing was warranted, to investigate whether Easy Energy was in breach of the Code of Conduct for Gas Marketers. On June 12, 2023, BCUC staff submitted Exhibit A2-1, illustrating the inconsistencies between the E-TPV script electronically signed by the Customer and the approved E-TPV script for Residential Consumers version 2.0.⁸ On June 15, 2023, BCUC staff issued Information Request No 1 (IR1) to Easy Energy.⁹ On June 29, 2023, Easy Energy filed the response to the IR1 (IR1 Response),¹⁰ accompanied by Supplementary Information.¹¹

2.0 LEGISLATIVE AUTHORITY

Section 71.1 (3) of the *Utilities Commission Act (UCA)* requires that:

A gas marketer must comply with the commission rules issued under subsection (10) and the terms and conditions, if any, attached to the gas marketer licence held by the gas marketer.

Through Order A-5-21 (Licence Order), the BCUC issued Easy Energy a gas marketer licence for the period of November 1, 2021 to October 31, 2022, which encompasses the Agreement and the Signed E-TPV. Directives 3(b) and 3(h) of the Licence Order required Easy Energy to comply with the following conditions on its gas marketer licence:

This Gas Marketer Licence is subject to the following conditions:

...

b. Easy Energy must comply with the Code of Conduct for Gas Marketers and Rate Schedule 36 of FortisBC Energy Inc.

...

h. Easy Energy must strictly adhere to the script as outlined in Article 33 of the Code of Conduct for Gas Marketers.

⁶ Order A-12-13, Appendix B, section 2.5.

⁷ Order A-12-13, Appendix B, p. 4.

⁸ Exhibit A2-1, p. 2.

⁹ Exhibit A-3.

¹⁰ Exhibit B-2.

¹¹ Exhibit B-2-2.

Section 109.1(1) of the UCA provides that:

(1) After giving a person an opportunity to be heard, the commission, for the purposes of section 109.2, may find that the person has contravened a provision of

- a. this Act or the regulations, or
- b. an order, standard or rule of the commission or a reliability standard adopted by the commission.

Further to the conditions set out in the Licence Order, Easy Energy was required to comply with Article 33 of the Code of Conduct as follows:

Article 33

... Additional requirements for electronic TPV:

The following additional requirements are in place for the use of electronic TPV:

...

- The electronic verification questionnaire must follow the required TPV script.
- The Gas Marketer must submit all electronic TPV materials to Commission staff for review and approval prior to commercial distribution and/or use. The Gas Marketer must retain, and submit to the Commission upon request, a record of the email sent to the Consumer regarding the TPV and a record of the Consumer's electronic verification.

Residential Consumers

For Residential Consumers, the TPV must follow the standardized scripting set out below. The Commission will not allow additions or deviations from the standardized script at this time. If the Gas Marketer wishes to request an amendment to the standardized script, the Gas Marketer may file the modified TPV script with Commission staff for comment and approval.

3.0 INVESTIGATION OF APPARENT CONTRAVENTION OF SECTION 71 (3) OF THE UCA

Easy Energy IR1 Response

In the IR1 Response, Easy Energy expressed its belief that:

...this proceeding is the result of an administrative error on the part of the BCUC in the issuance of Letter L-3-22. The version of the residential E-TPV script attached to Letter L-3-22 was not the version that was submitted to the BCUC for approval, which was the V2.1 script. The V2.1 script was submitted in dispute (...). Easy believes that the BCUC intended to approve the V2.1 script but a different version was mistakenly attached to Letter L-3-22...¹²

¹² Exhibit B-2, p. 4.

Easy Energy described a sequence of events and communications between Easy Energy and the BCUC.¹³ The main events are summarized below:

- On October 28, 2021, Order A-5-21 directed Easy Energy to file updated TPV scripts.
- Between October 29 and November 10, 2021, Easy Energy discussed the required changes to the TPV scripts with BCUC staff.
- On November 10, 2021, Easy Energy submitted four revised TPV scripts to BCUC staff: two TPV scripts for commercial customers and two for residential customers, with one phone call TPV script and one E-TPV script for each customer category. All four scripts were identified as version 2.0 (**V2.0**).
- On November 18, 2021, BCUC staff made remarks about the changes and requested Easy Energy to revise and resubmit the TPV scripts.
- On November 22, 2021, Easy Energy submitted four revised TPV scripts to BCUC staff, identified as version 2.1 (**V2.1**).
- On November 23, 2021, Easy Energy and BCUC staff discussed further changes to the scripts and Easy Energy submitted four revised TPV scripts to BCUC staff, which were again identified as **V2.1**.
- On December 17, 2021, BCUC staff requested additional information about the Easy Green product, which Easy Energy provided on the same day.
- On February 28, 2022, the BCUC issued Letter L-3-22 accepting the TPV script versions enclosed with that letter and directing Easy Energy to use the approved scripts going forward. Letter L-3-22 had four TPV scripts enclosed: one phone call TPV script and one E-TPV script for commercial customers, both identified as **V2.1** and one phone call TPV script and one E-TPV script for residential customers, both identified as **V2.0**.

Easy Energy asserts that when it reviewed Letter L-3-22, Easy Energy believed the V2.1 scripts were approved for both residential and commercial customers and did not notice that Letter L-3-22 actually attached V2.0 scripts for residential customers and V 2.1 for commercial customers.¹⁴

In light of the above, Easy Energy submitted it believes an administrative error may have occurred for the following reasons: (i) the V2.0 TPV scripts were never formally submitted to the BCUC for approval, (ii) BCUC staff informally approved V2.1 TPV scripts by email, (iii) the email sent by the BCUC with Letter L-3-22 made reference to Easy Energy's email that submitted the V2.1 TPV scripts, (iv) the BCUC did not provide reasons for rejecting V2.1 TPV scripts, and (v) the BCUC approval of V2.0 TPV scripts would not make sense, since the changes that resulted in V2.1 TPV scripts were requested by BCUC staff.

Easy Energy also submitted its responses to the IR1 regarding (i) Easy Energy's internal procedures for issuing the E-TPV for residential customers, (ii) the rationale for each individual change to the E-TPV script for residential consumers, and (iii) the usage of that script over the last couple of years and the number of customers that received it, yet noting its understanding that the arguments above made the questions in IR1 moot.

¹³ Exhibit B-2-2.

¹⁴ Exhibit B-2, p. 5.

Panel Determination

In this section, the Panel addresses Easy Energy's claims of an administrative error on the part of the BCUC. Then the Panel considers whether further process is necessary to determine whether Easy Energy contravened section 71.1(3) of the UCA.

Alleged Administrative Error

The Panel has reviewed Letter L-3-22, dated February 28, 2022, issued to Easy Energy and finds that:

- The BCUC approved TPV scripts V2.1 for commercial customers and V2.0 for residential customers; and
- The four TPV scripts approved by the BCUC were correctly attached to Letter L-3-22.

Therefore, **the Panel finds that there was no administrative error on the part of the BCUC in the issuance of Letter L-3-22.**

Nevertheless, the Panel also examined the circumstances in which the versions of the TPV script were created, discussed, approved, and communicated to Easy Energy, as shown in the evidentiary record.¹⁵

Even though the evidence does not confirm Easy Energy's submission that V2.1 of the TPV scripts for residential customers were approved by the BCUC, the evidence supports the following conclusions:

- Easy Energy actively engaged with BCUC staff to amend the TPV scripts, as directed by Order A-5-21, dated October 28, 2021;
- It was reasonable for Easy Energy to assume that V2.1 of all four TPV scripts were the ones under BCUC's review, given the previous communications with BCUC staff; and
- The TPV scripts approvals could have been communicated to Easy Energy in more detail, even though the approved TPV script versions were enclosed in Letter L-3-22.

In light of the circumstances listed above, and also taking into account the need to balance the gravity of the possible contravention with the need for regulatory efficiency, **the Panel finds that further process to investigate a possible contravention by Easy Energy of section 71.1(3) of the UCA is not warranted.**

However, the Panel recommends that Easy Energy review all future communications from the BCUC carefully, and notes that if Easy Energy wishes to make amendments to the TPV scripts approved by Letter L-3-22, it can file amended versions with BCUC staff for comment and approval, as per Article 33 of the Code of Conduct.

Therefore, **the Panel determines that the conclusion of the current proceeding is appropriate and directs Easy Energy to adopt the TPV scripts approved by Letter L-3-22 as soon as practicable.**

¹⁵ Exhibit B-2-2.