



June 25, 2024

Sent via email

Letter L-17-24

Re: Customer Choice Program – Dispute [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

On January 9, 2024, you (the Customer) filed a dispute against Access Gas Services Inc. (Access Gas), alleging that you did not sign a renewal agreement with Access Gas (the Agreement). The Customer states that when they contacted Access Gas on January 5, 2024, they were advised that they could not cancel the Agreement without a cancellation fee of \$600.

Evidence and Submissions

Access Gas filed a response to the dispute on January 15, 2024, and further responses to BCUC questions on January 16, 2024 and January 19, 2024. On April 11, 2024, the BCUC requested further information from both Access Gas and the Customer. Access Gas filed its responses to the BCUC's requests on April 17, 2024. The Customer filed their responses on April 30, 2024.

The copy of the Agreement provided to the BCUC by Access Gas as evidence in this dispute states on its face that it was "signed and accepted online" by [REDACTED] (the Customer) on December 12, 2022, and purported to come into effect on December 1, 2023.

Access Gas considers the Agreement valid and binding. In its January 15, 2024 response to the dispute, Access Gas states that the Customer has been a customer of Access Gas since 2013 and that the Agreement is the third agreement in place with the Customer. The second agreement, in place at the time the Agreement was purportedly signed, expired on December 1, 2023. According to Access Gas, an Access Gas representative contacted the Customer on December 9th, 2022, via phone, regarding the renewal, and the Customer expressed interest. According to Access Gas, their representative then emailed the Customer an online renewal acceptance agreement (i.e., the Agreement) to look over, which the Customer allegedly signed and accepted online on December 13, 2022.

On January 16, 2024, BCUC staff sent an email to Access Gas requesting a copy of an email from the Customer confirming the Customer's acceptance of the Agreement. In its response on January 16, 2024, Access Gas failed to provide such an email, and in its place provided a copy of an email from Access Gas to the Customer dated December 13, 2022 confirming enrollment in the customer choice program and attaching a copy of the Agreement. BCUC staff then followed up with a second request to Access Gas on January 16, 2024, asking for either an email or an electronic confirmation from the Customer (as opposed to one generated by Access Gas itself). Access Gas responded by email dated January 19, 2024, stating that its records indicate that it sent the Agreement via a system-generated email on December 12, 2022 at 12:33pm to the Customer's email address. Further, Access Gas states that the Customer "would have clicked on the link provided in the email, reviewed the information for accuracy and confirmed the agreement and understanding by checking the associated boxes and submitting it back to us." Access Gas did not provide either an email or an electronic confirmation from the Customer, and again provided a copy of an email from Access Gas to the Customer.

On April 11, 2024, BCUC staff issued further questions to Access Gas. In its April 17, 2024 response to staff questions, Access Gas confirmed that a third-party verification (TPV) call was not completed in this case due to the renewal being completed via "internet marketing". Access Gas also was unable to provide the BCUC with a copy of the December 12, 2022 email Access Gas had stated it had sent to the Customer, and which Access Gas claimed included a link to the Agreement. Instead, Access Gas provided a copy of an email exchange between the Customer and an Access Gas representative on December 12, 2022, in which the Customer stated that they did not receive the renewal email from Access Gas containing a link to the Agreement and requested that it be resent.

On April 11, 2024, BCUC staff issued questions to the Customer requesting they verify their email address and provide either a confirmation or denial that they received the confirmation email from Access Gas dated December 13, 2022, regarding the Agreement. On April 30, 2024, the Customer responded to staff questions confirming their email address and stating: "I believe I saw a notification, but don't remember whether or not I read the email sent on the 13th."

Applicable Law

Article 28-A of the Code of Conduct for Gas Marketers¹ requires a Gas Marketer to obtain a Consumer's written or electronic signature on a renewal agreement, and, in the case of an electronic signature, to ensure that all applicable requirements under the British Columbia *Electronic Transactions Act*² are met.

Section 15(1) of the *Electronic Transactions Act* provides that a contract may be accepted by clicking on an appropriate icon on a computer screen or otherwise communicating electronically:

Unless the parties agree otherwise, an offer or the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed

(a) by means of information or a record in electronic form, or

(b) by an activity in electronic form, including touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter.

¹ Order A-12-23, Appendix A.

² SBC 2001, c. 10.

Article 33 of the Code of Conduct requires a Gas Marketer to conduct a TPV call, satisfying certain requirements, before a Consumer's enrolment as a customer of the Gas Marketer. However, Article 33 also provides that a TPV call is not required if the Consumer executes an agreement with no contact by a Salesperson, through any means (e.g. in-person, telephone, online), at the time of contracting.

Article 28-A of the Code of Conduct similarly states that, in the case of a renewal agreement with a written or electronic signature, a TPV call is not required if the Consumer executes an agreement with no contact by a Salesperson, through any means (e.g. in-person, telephone, online), at the time of contracting.

The Code of Conduct defines a Salesperson as "a person who is employed by or otherwise conducts Marketing and/or Third Party Verification on behalf of a licensed Gas Marketer, or makes representations to Consumers on behalf of a Gas Marketer for the purpose of effecting sales of Gas to Low-Volume Consumers".

Sections 71.1(3) and (5) of the *Utilities Commission Act*³ provide that a Gas Marketer must comply with any rules issued by the BCUC for Gas Marketers, and that, if a Gas Marketer is not in compliance with such rules, the BCUC may declare an energy supply contract between the Gas Marketer and a customer to be unenforceable.

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

BCUC Determination

The BCUC notes that, although Access Gas has provided a copy of the Agreement that purports to show, on its face, that it was accepted by the Customer, Access Gas failed to provide either an email or an electronic confirmation from the Customer, when this information was requested by the BCUC. Similarly, Access Gas failed to provide a copy of the December 12, 2022 email Access Gas asserts it sent to the Customer with a link to the Agreement. This information, if it was available, would have been useful to the BCUC in reaching a determination on whether the Customer signed the Agreement.

However, Access Gas has submitted email correspondence with the Customer into evidence. In particular, the BCUC takes note of the email exchange on December 12, 2022 in which the Customer requested Access Gas to resend the email containing the link the Agreement, which makes it clear that the Customer engaged with Access Gas in December 2022 regarding the renewal of service. Taking all of the evidence into account, the BCUC is satisfied that the Customer signed the Agreement electronically in December 2022, in compliance with the requirements of the Code of Conduct and the *Electronic Transactions Act*.

In addition, the BCUC also notes that Access Gas acknowledges that an Access Gas representative phoned the Customer on December 9, 2022 regarding the renewal, prior to the Customer signing the Agreement, and corresponded with the Customer by email prior to the signature of the Agreement. The BCUC finds that this constituted "contact by a Salesperson, through any means (e.g. in-person, telephone, online), at the time of contracting", and that, as such, Access Gas was required to conduct a TPV in relation to the Agreement. Access Gas has confirmed, however, that no TPV was conducted in this case. As such, the BCUC finds that Access Gas failed to comply with the requirement to conduct a TPV found in Article 33 of the Code of Conduct.

³ RSBC 1996, c. 473.

In light of Access Gas's breach of Article 33 of the Code of Conduct, the BCUC declares the Agreement to be unenforceable as of June 25, 2024, the customer will revert to FortisBC Energy Inc. for its supply of natural gas. 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 Jessica O'Brien for:

Patrick Wruck
Commission Secretary

DD/jm
Enclosure

cc:	Ms. Michelle Meixner Customer Service Specialist Access Gas Services Inc. Michelle.meixner@accessgas.com	Mr. Charlie Barrotta Vice President Access Gas Services Inc. charlie.barrotta@accessgas.com
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An application for reconsideration of this determination can be made following the guidelines enclosed.



bcuc
British Columbia
Utilities Commission

Customer Choice Program

Dispute Reconsideration Guidelines

January 2012

British Columbia Utilities Commission
410, 900 Howe Street
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: 410 - 900 Howe Street, 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.