



July 16, 2024

Sent via email

Letter L-19-24

Re: Customer Choice Program – Dispute # [REDACTED] (Acct # [REDACTED] & # [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 March 21, 2024, you (the Customer) filed a dispute against Access Gas Inc. (Access Gas), alleging that there was an unauthorized signature on two Access Gas Customer Choice agreements for two meters located at your commercial property (the Agreements). Access Gas filed a response to the dispute on March 28, 2024.

Evidence and Submissions

The copy of the Agreements provided to the BCUC as evidence in this dispute states on their face that each Agreement was "signed and accepted online" by [REDACTED] on January 13, 2021, and purported to come into effect on January 1, 2022.

According to the Customer they did not sign either Agreement with the gas marketer.

Access Gas considers each Agreement to be valid and binding. According to Access Gas, the Customer signed two Customer Choice agreements with Access Gas in November 2016, for a 5-year term, commencing January 1, 2017. Subsequently, Access Gas asserts that an Access Gas representative contacted the Customer by phone on January 13, 2021, regarding renewals for these two prior agreements. Following this call, Access Gas states that the representative emailed the Customer two online renewal acceptance agreements (i.e., the Agreements). For each Agreement, Access Gas has submitted into evidence an email from Access Gas to the Customer dated January 13, 2021 notifying them of the renewal and providing a link to complete the online acceptance of the Agreement, and a second confirmation email dated January 13, 2021 that included a signed copy of the Agreement. Access Gas has not provided any information suggesting that Access Gas completed a third-party verification (TPV) call in relation to either of the Agreements.

In its March 28, 2024, response to the dispute, Access Gas states that the Customer closed their FortisBC account effective April 4, 2024, and that Access Gas offered the Customer a 30% discount off the quoted early termination fees. However, Access Gas states that the Customer expressed that he was not interested in reaching a mutual resolution. Access Gas states that the Agreements are valid and should not be terminated.

Applicable Law

Article 28-A of the Code of Conduct for Gas Marketers 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*¹ are met. In turn, the BCUC notes that 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.

Article 28-A of the Code of Conduct also 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.

In addition, 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.

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".

As the matter has not been resolved directly between the Customer and the gas marketer, Access Gas, the BCUC has reviewed and adjudicated the matter.

BCUC determination

The BCUC finds that the Agreements comply with the requirements under the Code of Conduct regarding electronic signatures. Based on the evidence provided, including the emails from Access Gas to the Customer on January 13, 2021 including a link to complete online acceptance of each Agreement, and the subsequent emails attaching a copy of each Agreement, the BCUC is satisfied that the Customer signed each Agreement.

The BCUC notes that Access Gas has acknowledged that an Access Gas representative phoned the Customer on January 13, 2021 regarding the renewals, prior to the Customer signing the Agreements. The BCUC finds that this constitutes "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 each Agreement, as per the Code of Conduct, Article 28-A. However, as noted above, Access Gas has not provided any information suggesting that Access Gas completed a TPV call in relation to either of the Agreements.

Despite the lack of evidence regarding a TPV call having been conducted, the BCUC finds it significant that each Agreement had been in place for more than two years after a previous 5-year term with the same gas marketer before the Customer attempted to cancel the Agreements and initiated this complaint. Based on the BCUC's review, Access Gas has also complied with the other requirements of the Code of Conduct.

The Customer filed this Complaint alleging they did not sign the Agreements, however, the BCUC is satisfied that the evidence establishes that the Customer signed the Agreements in 2021 and took service under them for two years. Therefore, the BCUC finds the Agreements to be enforceable.

¹ SBC 2001, c. 10.

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

Early exit fees may apply as per the terms and conditions of the Agreements. The customer may wish to contact Access Gas to inquire whether the resolution proposed by the gas marketer is still available.

Sincerely,

Original signed by:

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>

TABLE OF CONTENTS

	Page No.
1.0 INTRODUCTION	1
2.0 STEPS IN THE DISPUTE RECONSIDERATION PROCESS.....	1
2.1 Submit a Dispute	1
2.2 The Reconsideration Process	2
3.0 ALTERNATIVES TO THE RECONSIDERATION PROCESS	3
3.1 File for Leave to Appeal to the Court of Appeal of BC.....	3
3.2 The Office of the Ombudsperson of BC.....	3

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.