

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-150-06

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**An Application by Direct Energy Marketing Limited
for a Revision to the Code of Conduct for Gas Marketers as it applies to Commercial Customers with
Annual Volumes that Exceed 2,000 Gigajoules per Year**

BEFORE: L.F. Kelsey, Commissioner November 30, 2006

O R D E R

WHEREAS:

- A. In Commission Order No. G-90-03 dated January 9, 2004, the Commission accepted the Terasen Gas Inc. ("Terasen Gas") Commodity Unbundling Application dated October 27, 2003, Revisions to the Terasen Gas Commodity Unbundling October 27, 2003 Application dated December 4, 2003 and Addendum to Revisions to the Terasen Gas Commodity Unbundling October 27, 2003 Application (included in Terasen Gas December 15, 2003 Responses to Stakeholders' Comments Commodity Unbundling October 27, 2003 Application – Revised December 4, 2003) and approved the Code of Conduct for Gas Marketers (December 4, 2003, Revisions) pursuant to Section 61 of the Utilities Commission Act ("the Act"); and
- B. On October 6, 2006 Direct Energy Marketing Limited ("DEML") made an application to the Commission for approval to allow a Gas Marketer to obtain a waiver from the 10-day cooling off period required under Article 11 of the Code of Conduct for Gas Marketers for a Commercial Customer with annual volumes that exceed 2,000 gigajoules per year ("DEML Application"); and
- C. The DEML Application was reviewed by interested parties and comments were received from Avista Energy Canada Ltd., CEG Energy Options Inc., The British Columbia Public Interest Advocacy Centre and Terasen Gas; and
- D. In its letter dated October 24, 2006, Terasen Gas indicated that if DEML's proposed change was put in place it would not result in any modifications to systems and processes; and
- E. If in the future the Commission receives a sufficient number of complaints concerning the proposed change it may revisit the approval given by this Order.

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NOW THEREFORE the Commission orders pursuant to Section 61 of the Act and the Reasons for Decision attached as Appendix A the following:

1. The Code of Conduct for Gas Marketers, Article 11 should be changed as underlined:

“Cancellation rights of the Consumer including a mandatory 10-day cooling off period; a Gas Marketer must not submit a customer enrolment to the LDC for processing until the 10-day cooling off period has expired. For Commercial Customers, a 10-day cooling off period will not apply in the case of a single commercial customer whose aggregate annual volume exceeds 2,000 gigajoules per year at one or more premises and who has provided written consent to the gas marketer to waive the 10-day cooling off period.”

2. “Article 23 Information to be Maintained By a Gas Marketer” should be revised to read as follows:

“A Gas Marketer shall have a current telephone number listed in British Columbia which may be reached by the general public without charge and shall provide it to every customer.

A Gas Marketer shall maintain on file and provide such information to the Commission upon request:

- a list of all Salespersons and sub-contractors who act for the Gas Marketer;
- a list of customers;
- the Notices of Appointment of Marketer signed by its customers;
- copies of the Gas Marketer’s supply contract with each customer containing the customer’s written signature; and
- copies of the commercial customer’s written consent waiving the 10-day cooling off period.

In addition, the LDC has the right to audit any Notice of Appointment of Marketers, the Gas Marketers supply contract with each customer and the written consent waiving the 10-day cooling off period by providing prior written notice of the five business days to a Gas Marketer.”

3. Pursuant to Section 99 of the Act the Commission may reconsider, vary or rescind an Order made by it.

DATED at the City of Vancouver, in the Province of British Columbia, this 4th day of December 2006.

BY ORDER

Original signed by

L. F. Kelsey
Commissioner

Attachments

An Application by Direct Energy Marketing Limited
for a Revision to the Code of Conduct for Gas Marketers as it applies to Commercial Customers with
Annual Volumes that Exceed 2,000 Gigajoules per Year

REASON FOR DECISION

1.0 INTRODUCTION

1.1 Background

The Code of Conduct for Gas Marketers (“Code”) engaged in the Commodity Unbundling Service in the Province of British Columbia was approved by Order No. G-90-03 and made effective January 1, 2004. Article 11 as set out below indicated that there be a mandatory 10-day cooling off period for all commercial customers and that marketers were not to send in enrolment requests until that period had expired.

Currently Article 11 of the Code states that:

“Cancellation rights of the Consumer including mandatory 10 day cooling off period as required under the Consumer Protection Act; a Gas Marketer must not submit a customer enrollment to the LDC for processing until the 10 day cooling off period has expired.”

During the hearing process to examine the Terasen Gas Inc. Application, Commodity Unbundling Project for Residential Customers – Certificate of Public Convenience and Necessity, Direct Energy Marketing Ltd. (“DEML”) proposed the elimination of the 10-day cooling off period for small commercial customers with consumption over 2,000 GJ annually. In its Decision dated August 14, 2006 (page 57), the Commission directed that this issue be reviewed as a separate application.

On October 6, 2006 DEML applied to the Commission for an exemption from the 10-day cooling off period requirement for “sophisticated” small commercial customers participating in the Commercial Unbundling program. In its October 11, 2006 letter, the Commission proposed a change to this Article and then requested comments on DEML’s Application from registered participants in the Residential and Commercial Unbundling hearing processes and the Commission’s proposal as well.

The Commission suggested the following change to the Code of Conduct for Gas Marketers, Article 11 as underlined:

“Cancellation rights of the Consumer including a mandatory 10-day cooling off period; a Gas Marketer must not submit a customer enrolment to the LDC for processing until the 10-day cooling off period has expired. A 10-day cooling off period will not apply in the case of a single commercial customer whose aggregate annual volume exceeds 2,000 gigajoules per year at one or more premises and who has provided written consent to the gas marketer to waive the 10-day cooling off period.”

1.2 Application by Direct Energy Marketing Ltd.

DEML proposed that a licenced Gas Marketer operating under the Commercial Unbundling program be permitted to obtain permission from customers to waive the specified 10-day cooling off period that is currently required in Article 11. This would apply to Commercial customers with aggregated annual volumes that exceed 2,000 gigajoules per year.

DEML indicated that the 10-day cooling off period requirement hindered DEML's ability to provide competitive pricing options to commercial customers who may be considered sophisticated in their purchasing practices. In DEML's view there is a risk to maintain the price level for the 10-day period and this uncertainty is reflected in a higher price to the customers. Therefore it is DEML's contention that the elimination of this requirement will result in the development of more competitive pricing.

It is also DEML's view that the B.C. Consumers Protection Act ("Act") requires this re-examination period for consumers but not for commercial customers and waiving the 10-day cooling off period for commercial customers does not violate provisions in the Act. The Act is intended to govern direct sales contracts with consumers and not commercial customers therefore DEML's proposal would be suitable.

DEML's proposal is structured as follows:

Customer Eligibility

- A single customer with multiple premises whose aggregate annual volume exceeds the 2,000 gigajoules per year definition of an eligible Low Volume Consumer.
- Rate 3 Commercial Consumers.

Obtaining Customer Consent

- Marketer to obtain written consent from the commercial customer to waive the 10-day cooling off period, in addition to obtaining the existing documentation requirements for a signed supply contract and a signed Notice of Appointment of Marketer from the customer.
- In accordance with Article 23 of the Code of Conduct, the LDC and the Commission will have the right to audit the customer's written consent to waive the 10-day cooling off period.

2.0 POSITION OF PARTIES

Avista Energy Canada Ltd. ("Avista Energy" or "Avista")

In its letter dated October 24, 2006, Avista Energy stressed that the existing 10-day cooling off period continue and not be altered as it provides protection to customers making decisions in haste when they are unable to consider market conditions, canvass other suppliers or pursue other sources of information. Avista considers it similar to buying a product with a warranty that expires at the time of purchase and provides no protection to the consumer.

Avista also suggested that there is no concrete definition of purchaser sophistication and customer size does not necessarily equate to an understanding of the risks in natural gas markets. Therefore consumption at the 2,000 gigajoules per year threshold or the Rate 3 customer classification may not be reliable barometers of natural gas purchasing knowledge. The commitment to multi-year natural gas contracts are not commonly negotiated at one sales meeting as it requires careful thought, which supports maintaining the 10-day contemplation period in place.

Avista submitted that the price risk suggested by DEML can be mitigated through contract conditions. The contract can be structured to avoid the marketer having the price open as is reasonable to have contract conditions that would be activated if the price increased or fell within certain parameters. Therefore this inherent risk that results from having the price open would be avoided.

CEG Energy Options Inc. (“CEG”)

In its response dated November 16, 2006, CEG is in agreement with the position taken by DEML. The standing provision allowance for the 10-day cooling off period has unreasonably put CEG at risk for significant transaction costs on a number of fixed price contracts with sophisticated customers. These customers utilize expertise and purchasing processes much more sophisticated and detailed than many larger industrial customers.

CEG supports the allowance for exemption of the 10-day cooling off period for agreements for single or aggregated facility volumes with total fixed price natural gas volumes higher than 25,000 GJ. This would include for example one customer under a five year price agreement for 5,000 GJ/year.

Mr. Jean Binette

Mr. Jean Binette acknowledges in his e-mail dated October 13, 2006 that the B.C. Consumer Protection Act refers to individuals and not business, but doubts whether there are many “sophisticated” customers. He does not expect that the elimination of the cooling off period will result in the development of more competitive pricing. In his opinion the cooling off period provides a protection measure only to commercial users against undue pressure by third party marketers.

The British Columbia Public Interest Advocacy Centre (“BCPIAC”)

The BCPIAC had no objection to the proposed change to Article 11 of the Code for gas marketers. The change would benefit a specific category of commercial customers without adversely impacting other customers.

Terasen Gas Inc. (“Terasen Gas”, “Terasen” or “TGI”)

In its response of October 24, 2006 Terasen Gas indicated that it does believe that there is value in having a 10-day cooling off period continue for less sophisticated commercial customers whose volumes are less than 2,000 gigajoules per year (i.e. Rate 2 – Small Commercial). It also stated that DEML’s proposals would not result in modifications to systems and processes required to support both Commercial and Residential Unbundling.

Terasen Gas also suggested that the words “For Commercial Consumers” be added to the beginning of the proposed wording suggested by the Commission in order to specify that that the ability to waive the 10-day cooling off period applies to only some Commercial consumers and not to Residential customers. In addition, TGI proposed amendments to “Article 23 Information to be Maintained By a Gas Marketer” in order to ensure that the Gas Marketer maintains on file a written consent for the Marketer to waive the 10-day cooling off period and a provision for TGI and the Commission to audit this form. Therefore TGI proposed the following revision to Article 23 as follows:

“A Gas Marketer shall have a current telephone number listed in British Columbia which may be reached by the general public without charge and shall provide it to every customer.

A Gas Marketer shall maintain on file:

- a list of all Salespersons and sub-contractors who act for the Gas Marketer;
- a List of customers;
- a Notice of Appointment of Marketer signed by its customers;
- copies of the Gas Marketer’s supply contract with each customer containing the customer’s written signature;

- copies of the commercial customer's written consent waiving the 10-day cooling off period; and
- and shall provide such information to the Commission upon request.

In addition, the LDC has the right to audit any Notice of Appointment of Marketers, the Gas Marketer's supply contract with each customer and the written consent waiving the 10-day cooling off period by providing written notice of the five business days to a Gas Marketer.

DEML's Response to Positions of Other Parties

DEML's October 31, 2006 reply highlighted two aspects of its Application. Firstly, the proposal is based on a customer's choice to waive the cooling off period and secondly, it is the sophistication of commercial and industrial customers that will influence this action.

DEML's proposal to request an exemption will empower sophisticated customers with the right to choose an alternative which best suits their requirements. This is an option and these customers can decide whether or not the 10-day cooling off period is in their best interest.

Sophisticated commercial or industrial customers proactively manage their supply chain to maximize value. In many cases, these consumers solicit offers through a Request for Proposal process whereby price comparisons can easily be made and transactions can be completed. Natural gas transactions are completed in similar fashion to other goods and services the customer usually purchases so there is a familiarity with the process.

3.0 COMMISSION DETERMINATION

The Commission determines that certain Commercial customers should be provided with the option to waive the 10-day cooling off period. These are parties who consume larger amounts of gas who are considered more likely to be sophisticated customers that are familiar with commercial contracts and are not afforded the requirement of a 10-day contemplation period under the BC Consumers Protection Act.

In some circumstances, a Commercial customer may conclude it is in its interest to waive the 10-day cooling off period, and the Commission concludes that it should have the option to do so. Terasen Gas has already confirmed that the proposed changes to accommodate this action will not result in modifications to systems and processes (TGI's letter dated October 24, 2006).