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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER A-9-08**

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

and

**Modifications to the Code of Conduct for Natural Gas Marketers
engaged in Commodity Unbundling Service
in the Province of British Columbia**

BEFORE: L.F. Kelsey, Commissioner August 22, 2008

O R D E R

WHEREAS:

- A. Commission Order C-6-06 granted a Certificate of Public Convenience and Necessity ("CPCN") to Terasen Gas Inc. ("Terasen Gas") for the Residential Commodity Unbundling Project ("Customer Choice Program") effective November 1, 2007; and
- B. Commission Order G-152-06 approved five components in support of the Residential Commodity Unbundling CPCN that included: Customer Education, Confirmation Letter, Dispute Resolution Process, Changes to the Code of Conduct for Gas Marketers ("Code of Conduct") and Changes to Rate Schedule 36; and
- C. Commission Order G-40-07 approved revisions to Rate Schedules 1U, 1X, 2X, 3X and the Code of Conduct; and
- D. Commission Order G-45-07 approved revisions to the Code of Conduct; and
- E. Commission Orders G-73-07 and G-44-08 approved further revisions to the Code of Conduct; and
- F. By letter dated May 7, 2008 the Commission provided a draft Code of Conduct with further revisions ("Proposed Revised Code of Conduct") requesting comments of all Gas Marketers; and
- G. Comments were submitted between June 9, 2008 and June 19, 2008 by Direct Energy Marketing Ltd. ("Direct Energy"), Energy Savings BC ("ESBC"), Superior Energy Management ("Superior Energy"), and Wholesale Energy Group ("Wholesale Energy"), commenting on the proposed revisions to the Code of Conduct; and

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- H. The Commission has reviewed the Gas Marketers' comments on the Proposed Revised Code of Conduct and has determined that the Code of Conduct for Gas Marketers should be amended and revised to incorporate changes to several of the Articles within.

NOW THEREFORE pursuant to section 71.1 of the *Utilities Commission Act* and the Code of Conduct and Rules for Gas Marketers, the Commission amends the Code of Conduct effective the date of this Order by adding additional clarification as set out below with Reasons for Decision attached as Appendix A, and orders that:

1. Where this Order requires changes to be made to a Gas Marketer's Consumer Agreement or Contract, 30 days from the date of this Order will be given to implement the changes.
2. A copy of each Gas Marketers' Consumer Agreement or Contract, which is in full compliance with the Code of Conduct, must be filed with the Commission within 30 days of the date of this Order. Where the Commission finds that a Gas Marketer's Agreement or Contract does not comply with the Code of Conduct, penalties may be imposed.
3. A Revised Code of Conduct for Gas Marketers is attached as Appendix B to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of August 2008.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachments

Modifications to the Code of Conduct for Natural Gas Marketers
engaged in
Commodity Unbundling Service
in the Province of British Columbia

REASONS FOR DECISION

1.0 INTRODUCTION

During the Gas Marketing Meeting held on April 8, 2008 in Vancouver to which all Gas Marketers were invited to attend, and with attendance by representatives of Access Gas Services Inc. ("Access Gas"), Active Renewable Marketing Ltd. ("Active Renewable"), CEG Energy Options Inc. ("CEG"), Direct Energy Marketing Ltd. ("Direct Energy"), Energy Savings BC ("ESBC"), Summitt Energy BC LP ("Summitt Energy"), Superior Energy Management ("Superior Energy"), Universal Energy Corporation ("Universal Energy"), and Wholesale Energy Group ("Wholesale Energy"), as well as representatives of Terasen Gas Inc. ("Terasen Gas"), British Columbia Public Interest Advocacy Centre ("BCPIAC") and representatives of the British Columbia Utilities Commission ("Commission"), proposed changes to the Code of Conduct were discussed. A draft copy of the revised Code of Conduct was provided to participants prior to the meeting for discussion. On the amendments and additions discussed, some suggested changes were made to the Proposed Code of Conduct and subsequent to the meeting, a further Proposed Revised Code of Conduct was created to incorporate some of the comments and concerns raised at the meeting.

By letter dated May 7, 2008 the Commission provided Gas Marketers with the Proposed Revised Code of Conduct and requested further comments on the changes. The Proposed Revised Code of Conduct included some minor housekeeping changes, and several more substantial content changes.

Letters from Direct Energy, ESBC, Superior Energy, and Wholesale Energy, were received between June 9, and June 19, 2008 commenting on some of the changes.

In any event where comments were provided regarding the Proposed Revised Code of Conduct that are unrelated to this specific request for comment from Gas Marketers, the comments received have not been incorporated in this Reasons for Decision or Code of Conduct, and are not being considered in this revision.

2.0 PROPOSED AMENDMENTS TO THE CODE OF CONDUCT

2.1 Basic Principles

Proposal - To amend the Basic Principles to include, "*...accurate and truthful dissemination of information...*"

Gas Marketer Comments

No comments were submitted for this addition.

Commission Determination

The Basic Principles now read:

“All Marketing of Gas under the Commodity Unbundling Service will conform to the principles of fair competition as generally accepted in business, with particular regard to:

- *the terms of the offer and the methods and form of the contact with the Consumer;*
- *the methods of presentation and the information on the supply; and*
- *the fulfilment of any obligation arising from the offer of purchase of Gas under the Commodity Unbundling Service.*

Marketing of Gas under the Commodity Unbundling Service will be carried out in conformity with the laws of Canada and its provinces, where applicable.

*Gas Marketers shall voluntarily assume responsibility towards the Consumer with respect to fair sales methods, **accurate and truthful dissemination of information**, and product value, and shall make every reasonable effort to ensure Consumer satisfaction.*

Gas Marketers shall ensure that their Salespersons are fully informed as to the characteristics of the gas supplies and/or services offered to enable them to give the Consumer all necessary information to make informed decisions.”

2.2 Definitions

Proposal – To amend the Definitions to include the definition of Enrollment, as well as edits to the definitions of Salesperson and Third Party.

Gas Marketer Comments

No comments were submitted for this addition and/or edits.

Commission Determination

The Definitions are amended to include:

- **Enrolment is the act of submitting the Consumer’s Agreement to the LDC once it has been signed and verified by Third Party Verification in accordance with this Code.**

Salesperson is now defined as:

- **Salesperson** means 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.

Third Party is now defined as:

- **Third Party** with respect to **Confidentiality of Consumer's Agreements**, means a person other than the Gas Marketer, and includes other Gas Marketers, affiliates, Consumers and other persons.

2.3 Article 6

Proposal – To amend Article 6 to include, “...including the Consumer’s Agreements...”

Gas Marketer Comments

No comments were submitted for this addition.

Commission Determination

Article 6 now reads:

*“The name, permanent address, main British Columbia office address and the telephone number, fax number, e-mail and website addresses of the Gas Marketer shall be clearly and fully disclosed in any Marketing document or other Marketing literature distributed to the Consumer, **including the Consumer’s Agreements**, so as to enable the Consumer to remain in touch directly with the Gas Marketer. Marketing documents and other literature containing only an accommodation address or a post office box number are not acceptable.”*

2.4 Article 9

Proposal – To amend Article 9 to include: “Where a language or comprehension issue is likely to impede the Consumer’s ability to fully understand the offer and the transactions, the Salesperson shall not execute the Consumer Agreement(s) and/or the Third Party Verification.”

Gas Marketer Comments

ESBC stated that lack of comprehension is already reflected most clearly and distinctly in Article 16. Also that we now have Third Party Verification (TPV) in place as an additional measure to confirm understanding and provide the customer with yet another discussion of their ability to cancel the contract. ESBC views Article 16, combined with TPV, as reasonable assurances to cover a lack of understanding due to language.

Superior Energy stated that it has processes in place to ensure compliance with the Commission's TPV requirements, which includes a positive response by the account holder to the material aspects of the agreement required prior to enrolment. As comprehension is such a subjective issue, Superior Energy suggests determination of comprehension, beyond the current requirements for Third Party Verification, may be difficult to standardize and support.

Commission Determination

The Commission has reviewed this proposed change to Article 9 of the Code of Conduct and has considered the comments of the Gas Marketers. The Commission is of the view that this is an important addition to the Code of Conduct as the Salesperson must take responsibility to ensure that the sale is legitimate. Should a Salesperson determine that a Consumer may not fully understand the offer that is being presented due to a language barrier, or other comprehension issue, the Salesperson is obligated to halt the sales presentation; in instances where the Salesperson feels confident that the Consumer fully understands the offer and the transactions, it is then the obligation of the TPV agent to ensure that there is no language or comprehension issue.

The Commission has determined that this change will be incorporated in Article 16 of the Code of Conduct rather than Article 9.

No changes will be made to Article 9, which continues to read as:

"Salespersons shall in good faith assist Consumers to evaluate the nature of the transactions. Marketing efforts shall be organized and carried out so as not to:

- *create confusion in the mind of the Consumer;*
- *mislead the Consumer or misrepresent any aspect of the Offer or Consumer's Agreements;*
- *abuse the trust of the Consumer;*
- *unduly pressure or harass the Consumer to enter into transactions; and*
- *exploit the lack of experience and knowledge of the Consumer."*

Please refer to Section 2.10 – Article 16.

2.5 Article 11

Proposal – To amend Article 11 to replace the term '*cooling off*' with '*cancellation*' and to include in the last bullet "*...and Consumer's Agreements.*"

Gas Marketers Comments

No comments were submitted for this amendment.

Commission Determination

Article 11 now reads:

“The characteristics of any transaction shall include:

- *price, deposit, credit and rebate terms;*
- *terms of payment and frequency;*
- *the beginning and end dates of the agreement;*
- *identity of and accessibility to the Gas Marketer;*
- *process for making a complaint to or enquiry of the Gas Marketer;*
- *delivery terms and conditions, during-and after-sales services;*
- *sources and reliability of supplies;*
- *terms of guarantee and warranty;*
- *liabilities and obligations of the Gas Marketer and Consumer;*
- *benefits/risks to Consumer;*
- *awards, bonuses, prizes, discounts and other incentives with respect to the Offer and Consumer’s Agreements;*
- *Consumer’s entitlement to receive a copy of this Code from the Gas Marketer;*
- *reasons for which the agreement may be terminated by the Gas Marketer;*
- *for Commercial Consumers, that the agreement is made with respect to the Consumer’s Premise and terminates in the event the Consumer moves;*
- *for Residential Consumers, that the agreement is made with respect to the Consumer at the Consumer’s Premise and in the event the Residential Consumer moves, the Consumer’s Agreements will apply to the Consumer at their new Premise, provided that the new Premise is served with natural gas and that it is in an eligible service territory of the Utility providing the Commodity Unbundling Service;*
- *for Commercial Consumers, cancellation rights of the Consumer including a mandatory 10 day **Cancellation** Period; a Gas Marketer must not submit a Consumer enrolment to the LDC for processing until the 10 day **Cancellation** Period has expired.*

*For Commercial Consumers, a 10 day **Cancellation** Period will not apply in the case of a single Commercial Consumer 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 **Cancellation** Period;*

- *for Residential Consumers, **all cancellation provisions, for the purposes of the Commodity Unbundling Service;***
- *rights under the Consumer's Agreements with respect to assignments, transfers and sales to another Gas Marketer;*
- *any deposit, exit, late fees or any other charges payable to the Gas Marketer, if applicable;*
- *any other information required to be provided to the Consumer by Canadian or applicable provincial law; and*
- *all other terms of the Offer **and Consumer's Agreements** shall be presented completely, accurately and truthfully."*

2.6 Article 12

Proposal – To amend Article 12 to include "...in the event that a recorded message constitutes a portion or all of the sales process..."

Gas Marketer Comments

No comments were submitted for this addition.

Commission Determination

Article 12 now reads:

"Telephone and Door to Door Marketing

When conducting telephone or door to door Marketing, the Gas Marketer shall comply with applicable laws. All telephone and door to door contacts must be made Monday to Friday between the hours of 9 a.m. and 9:30 p.m. or on Saturday and Sunday between the hours of 10:00 a.m. and 6:00 p.m. local time. Salespersons must immediately, truthfully and fully identify themselves to the prospective Consumers. They shall also immediately, truthfully and fully indicate the purpose of their approach to the Consumers, identify the Gas Marketer with whom they are associated and indicate that they are selling Gas under the Commodity Unbundling Service.

*For telephone marketing, **in the event that a recorded message constitutes a portion or all of the sales process**, the caller must first personally obtain the consent of the recipient to play a recorded offer. The Gas Marketer shall forward a written agreement to sign-up for service by telephone marketing and obtain from the Consumer a signed agreement in return. The Gas Marketer shall direct the LDC to switch the Consumer's Gas supply only once the Gas Marketer is in possession of the signed agreement from the Consumer.*

Internet Marketing

The Gas Marketer shall forward a written agreement to sign-up for service by Internet marketing and obtain from the Consumer a signed agreement in return or obtain an electronic signature which complies with the B.C. Electronic Transactions Act. The Gas Marketer shall direct the LDC to switch the Consumer's Gas supply only once the Gas Marketer is in possession of the signed agreement from the Consumer. Electronic signatures which comply with the B.C. Electronic Transactions Act shall be accepted for Consumers committing to new agreements and for the renewal of existing agreements."

2.7 Article 13

Proposal – To amend Article 13 to consistently refer to the Contract or Agreement as 'Consumer's Agreements.'

Gas Marketer Comments

No comments were submitted on this amendment.

Commission Determination

Article 13 now reads:

"Should any Consumer complain that a Gas Marketer or Salesperson has engaged in any improper course of conduct pertaining to Marketing under the Commodity Unbundling Service, the Gas Marketer shall promptly investigate the complaint and take all appropriate and necessary steps in the circumstances to redress any and all wrongs disclosed by such investigation.

*All **Consumer's Agreements** will include a provision that all disputes between the Gas Marketer and a Consumer arising out of the contract will be referred to and resolved by arbitration administered by the Commission or other body appointed by the Commission for purpose of resolving such disputes and conducted according to the Commission's rules for the resolution of such disputes. The Gas Marketer shall pay a dispute resolution fee for each dispute referred to the Commission as determined by the Commission, except for a dispute where the Commission determines that the Consumer will be solely responsible for the dispute resolution fee.*

All evidence in a dispute must be uploaded in the GEM system by the end of the ninth day following the initial logging of the dispute in GEM. This includes evidence provided by customers and by Gas Marketers. No evidence will be accepted for a dispute if received after the ninth day outstanding in GEM. If information is to be considered after this deadline, the party must submit a request for reconsideration in accordance with BCUC procedures.

*Minimum evidence to be filed by a Gas Marketer includes **the Consumer's Agreement, Notice of Appointment of Marketer, and Third Party Verification Recording for Consumer's Agreements** signed after July 1, 2007."*

2.8 Article 14

Proposal – To amend Article 14 to include "...aggressive..." and "Posted signs restricting and/or prohibiting marketing and soliciting must be respected."

Gas Marketer Comments

No comments were submitted for this addition.

Commission Determination

Article 14 now reads:

*"Marketing shall not be intrusive, **aggressive**, or harassing in nature. Marketing activity (excluding online Marketing) shall be limited to between Monday to Friday between the hours of 9:00 a.m. and 9:30 p.m. or on Saturday and Sunday between the hours of 10:00 a.m. and 6:00 p.m. local time. The right of a Consumer to refuse further discussion shall be respected. **Posted signs restricting and/or prohibiting marketing and soliciting must be respected.**"*

2.9 Article 15

Proposal – To amend Article 15 to include "...benefits of the Program..."

Gas Marketer Comments

No comments were submitted for this addition.

Comments have been submitted and outlined in Article 24 for the third paragraph addition.

Commission Determination

Also refer to Article 24.

Article 15 now reads:

"A Salesperson shall not abuse the trust of individual Consumers or exploit their lack of experience or knowledge, nor play on ignorance or on fear, thereby exerting undue pressure on Consumers. All Offers must, therefore, be clear and honest.

*A Salesperson shall not make any statement or take any measure which, directly or by implication, omission, ambiguity or exaggeration, is likely to mislead a Consumer with regard to the **benefits of the Program**, terms of the Offer, Consumer's Agreements or any other matter.*

The Gas Marketer may not request that the Consumer provide their Terasen Gas account information, including their bill, until the Consumer expresses intent to enter into the Consumer Agreement.

A Salesperson shall, to the best of his or her knowledge and ability, give complete, accurate and clear answers to a Consumer's questions concerning the Offer or any other matter."

Please refer to Section 2.14 – Article 24.

2.10 Article 16

Proposal – No proposal was initially made to change Article 16 of the Code of Conduct; however, in reviewing Article 9 of the Code of Conduct, a determination has been made to add: *"Where a language or comprehension issue is likely to impede the Consumer's ability to fully understand the offer and the transactions, the Salesperson shall not execute the Consumer Agreement(s) and/or the Third Party Verification."*

Gas Marketers Comments

Refer to Section 2.4 - Article 9.

Commission Determination

Article 16 now reads:

"A Salesperson shall ensure that the Consumers clearly and thoroughly understand the information given. The demonstration or explanation of the transaction under the Commodity Unbundling Service shall, as far as possible, be adapted to the needs and enquiries of the Consumers.

*A Salesperson shall give sufficient time for Consumers to read the entire contract form thoughtfully and without interruption or harassment. **Where a language or comprehension issue is likely to impede the Consumer's ability to fully understand the offer and the transactions, the Salesperson shall not execute the Consumer Agreement(s) and/or the Third Party Verification.***

A Salesperson shall not make any verbal representations regarding agreements, rights or obligation unless those representations are contained in the Consumer's Agreements.

Gas Marketers shall ensure that their Salespersons are generally knowledgeable in the natural gas business, fully informed as to the characteristics of gas supplies and/or services offered and the Consumer's Agreement utilized by the Marketer, to enable them to give the Consumer all necessary information to make informed decisions."

2.11 Article 17

Proposal – To amend Article 17 to include "...or customer experience..."

Gas Marketer Comments

No comments were submitted for this addition.

Commission Determination

Article 17 now reads:

*"A Salesperson shall not refer to any testimonial, endorsement, or **customer experience** which is:*

- *not authorized by the person quoted, if in a private capacity;*
- *not genuine or unrelated to the experience of the person giving it;*
- *obsolete or otherwise no longer applicable;*
- *taken out of context; or*
- *used in any way likely to mislead the Consumer."*

2.12 Article 18

Proposal – To amend Article 18 to include "...statistics, and visual material...", "All comparisons, statistics, and visual material must be clearly and accurately labeled" and "Illustrations of projections of future pricing based on past records of more than one year are not permitted."

Gas Marketer Comments

Direct Energy stated that it does not believe there is a requirement to include such a specific provision, and that language in the Code already prohibits marketers from utilizing misleading comparisons, statistics, or visual material. Direct Energy suggests that if the Commission does not find the existing provision sufficient, a five-

year limitation would be more appropriate as one year does not provide the customer with an adequate amount of historical information. Direct Energy also stated that five years of data would align the amount of historical information with the maximum term that a consumer can currently contract in the market, and also includes data from the inception of Commodity Unbundling in 2004.

ESBC stated that there are some exceptions to the use of history; showing that prices vary over time is certainly true in the past and the future. Also, if projections are provided from respected economic companies (and referenced), this should also be appropriate.

Commission Determination

The Commission is aware that visual material is an asset in marketing a product; however, that material must be clearly and accurately labeled to ensure that the Consumer is fully aware of the legitimacy of the data being presented to them. When statistical data is presented to a Consumer which is intended to show a gradual price increase, it can be misleading to the Consumer by implying that the Gas Marketer is able to predict what the rate of natural gas may be in the coming years, and since the market price of natural gas is volatile, this can be confusing.

The Commission is of the view that it is a reasonable request by the Gas Marketers to have a limitation of a 5-year history when providing visual material. The visual material must be clearly and accurately labeled and projections of future prices are not acceptable. Any visual material must be based on actual data received by the LDC and may only be presented to the Consumer for the British Columbia market. No visual or statistical data may be provided to the Consumer for any other jurisdictions.

Article 18 now reads:

*"A Salesperson shall refrain from using comparisons, **statistics, and visual material** which might mislead and/or which are incompatible with the principles of fair competition. Points of comparison shall be fairly selected and shall be based on facts which can be substantiated. **All comparisons, statistics, and visual material must be clearly and accurately labelled.***

All comparisons, statistics, and visual material that are provided to a Consumer must be actual data obtained from the LDC and based only on actual data for British Columbia.

*All statements or promises made in any promotional material must be complete and in accordance with actual conditions, situations and circumstances existing at the time the promotion is made. Any data referred to must be competent and reliable and support the specific claim for which it is cited. **Illustrations of historical data based on past records of more than five years are not permitted, and no projections of future pricing may be presented to the Consumer.***"

2.13 Article 23

Proposal – To amend the term ‘Cooling-Off Period’ to ‘Cancellation Period’.

Gas Marketer Comments

No comments were made on this amendment.

Additional changes were made to Article 23 as a result of comments requested and received for Article 28 of the Code of Conduct.

Please refer to Article 28 for comments on this further addition to Article 23.

Commission Determination

Article 23 now reads:

“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 Consumer.

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 that Gas Marketer;*
- *A list of Consumers;*
- ***A log of cancellation requests, including confirmation numbers provided to Consumers and the name or identification number of the representative who accepted the request for cancellation;***
- *The Notices of Appointment of Marketer signed by its Consumers;*
- *Copies of the Gas Marketer’s supply contract with each Consumer containing the Consumer’s written signature; and*
- *Copies of the Commercial Consumer’s written consent waiving the 10 day **Cancellation Period**.*

In addition, the LDC has a right to audit any Notices of Appointment of Marketers and the Gas Marketer’s supply contract with each Consumer by providing prior written notice of five business days to a Gas Marketer.”

2.14 Article 24

Proposal – To amend Article 24 to include *“The Gas Marketer may not request that the Consumer provide their Terasen Gas account information, including their bill, until the Consumer expresses intent to enter into the Consumer Agreement.”*

Gas Marketer Comments

ESBC stated that it uses the customer’s bill for two reasons. One is to determine whether the customer is on another program, and the other is to gather the information to fill in the contract once the customer has agreed to the contract. ESBC stated that at the April Gas Marketer Meeting, a compromise was suggested to state in the Article that the Gas Marketer may not require that the customer provide their Terasen Gas account information until the customer has expressed an interest in entering into the Gas Marketer’s supply contract.

Superior Energy stated that it understands the need to inform the customer of the material aspects of the agreement prior to requesting access to the customer’s bill. Customers currently participating in the Program are blocked from switching to another retailer agreement during their current contract. As customers do not always remember details around existing price protection agreements, establishing a customer’s availability to enroll is not always possible without viewing the customer’s invoice. Superior Energy suggested that the Gas Marketers refrain from requesting access to the customer’s invoice until the customer has expressed an interest in participating in the marketer’s offer, versus when the customer agrees to enter into the agreement.

Wholesale Energy stated that the only way that the sales agent will know for sure if the customer is eligible to enter into a sales agreement, is to ensure that they are not already with another Gas Marketer. Wholesale Energy stated that its experience in this jurisdiction and others is that customers do not always remember whether they have signed up with a Gas Marketer. This is the reason that the sales agent asks to see the customer’s gas bill.

Wholesale Energy suggested that the Commission adopt the wording that was proposed at the April Gas Marketing Meeting or alternative wording that allows the sales agent to determine the eligibility of the potential customer.

Commission Determination

The Commission is of the view that based on complaints received the practice of requesting a Consumer’s billing information immediately in the sales presentation has been widely abused by Salespersons. This technique has acted as a resource for a Salesperson to obtain the necessary information from the Consumer in order to complete the Customer Agreement and obtain a signature where required. The Consumer is not having a fair opportunity to fill in the form and/or to read it thoroughly while it is being completed.

The Commission has determined that this change will be incorporated in Article 15 of the Code of Conduct rather than Article 24.

No changes will be made to Article 24, which continues to read as:

"Prior to submitting a request to the LDC for a Consumer's historical gas consumption data, a Gas Marketer must obtain the Consumer's signature on a consent form and provide a copy of this signed consent form to the LDC."

2.15 Article 26

Proposal – To amend Article 26 to include 'Consumer's Agreements,' '...including default rollover provisions,' '...and the requirement that the Consumer's Agreements may only be terminated on their anniversary date.'

Gas Marketer Comments

No comments were submitted for these amendments.

Commission Determination

Article 26 now reads:

*"The **Consumer's Agreements**, in accompaniment with the Notice of Appointment of Marketer, will be clearly designated as an "Agreement" or a "Contract". The terms "Application" or "Enrollment" do not accurately reflect the agreement made between the Marketer and the Consumer. There should be no confusion in the mind of the customer that this is a binding contract and not an application or enrollment.*

The Consumer's right to cancel without penalty must be referred to as the 'Ten Day Cancellation' provision and must be clearly stated in the Consumer's Agreement, prominently situated above the Consumer's signature line. Instructions must be included on how the Consumer can exercise this option.

The first page of the agreement between the Gas Marketer and a Consumer must accurately summarize and clearly state the essential elements of the Offer including:

- *Price (Canadian \$ per gigajoule);*
- *Term (length in years, start and end dates;*
- *Renewal provisions (type, frequency, dates) **including default rollover provisions;***
- *Cancellation provisions;*
- *Penalties and terms for early termination of the contract, including minimum contract term, **and the requirement that the Consumer's Agreements may only be terminated on their anniversary date;** and*

- *Conditions which may affect the price or term of the Offer.*

The minimum contract term is one year with a maximum contract term of no more than five years and the dates for commencement of service and termination of service must coincide with program entry dates."

2.16 Article 28

Proposal – To insert a new Article and renumber the remaining Articles accordingly. The Proposed Article is titled '**Cancellation of Agreements,**' and suggested to state:

Cancellation of Agreements

"A Gas Marketer shall accept a Consumer request for cancellation when within the 10 day Cancellation Period, and under the terms of the contract without engaging in further sales or marketing activity under that Consumer's Agreement.

A Gas Marketer shall accept a Consumer's request for cancellation when within the Cancellation Period without making the process onerous on the Consumer. The Consumer must be able to exercise their rights under the Cancellation Period by telephone, facsimile, email, or mail.

When exercising a Cancellation Provision to cancel the Consumers' Agreements, at the anniversary date of the Consumer's Agreement, the Consumer may provide written notice to the Gas Marketer at any time prior to the 60 days before the anniversary date of the Consumer's Agreement."

Gas Marketer Comments

Direct Energy stated that it does not agree with this proposed revision to Article 28 as it looks to resolve specific customer issues by unfairly restricting all marketers' ability to conduct business. Direct Energy stated that it does appreciate the Commission's intention to end confusion caused by unrecorded telephone cancellations, however, it believes that the appropriate remedy would be a requirement to provide cancellation by any method that would allow the customer to prove that they gave notice, including mail, fax, email, or by personal delivery. Direct Energy stated that this practice protects customers and Direct Energy as there is a verifiable record of the customer's intent to cancel the contract.

Direct Energy also stated that it has serious concerns relating to permitting customers to cancel their contracts by telephone. It stated that this option greatly expands the likelihood of possible confusion regarding whether or not a customer has cancelled, and more importantly, fraud. Direct Energy stated that where a signature or even an email address is obtained, it can confirm that the person who signed the contract was authorized to do so. Direct Energy stated that written contract cancellations are a common practice, if not an accepted standard, in all other retail industries requiring the signing of a contract.

ESBC and Wholesale Energy stated that its recollection from the April Gas Marketing Meeting was that this clause was intended to pertain to the 10 day cancellation period. ESBC and Wholesale Energy questions whether or not the Gas Marketer can provide clarifying information to the customer, without this being considered further sales marketing activity. Wholesale Energy added that reference to the 10 day cancellation period is noted in the Article and that Gas Marketing personnel be allowed to provide clarifying information to the customer.

Superior Energy requested clarification on whether this Article is intended to apply to the 10 day cancellation period only. Superior Energy stated that it appreciates the need to honour a customer's right to cancel. Asking the customer why they wish to cancel affords Superior Energy the opportunity to clarify misinterpretations that will allow the customer to make an informed decision. In the event that the customer still wishes to cancel once the customer has received all of the facts, Superior Energy stated that a cancellation would be processed immediately. The information provided by the customer may be used to design future programs that will better meet the needs of BC natural gas Consumers.

Commission Determination

The Commission has reviewed the comments provided relating to the addition of Article 28. The Commission notes that at no point during the administering of the Customer Choice Program did the Commission find it acceptable for Gas Marketers to not accept cancellation requests within the 10 day cancellation period by telephone. The 10 day cancellation period serves as added protection for Consumers. The Commission intends that the 10 day cancellation period for Consumers is to ensure that they have a full opportunity to review the Consumer Agreement and obtain any additional information prior to committing. This period also allows for the Consumer to receive the Terasen Gas confirmation letter, which advises the Consumer of the final date by which they may cancel the agreement.

In order to fully offer a 10 day cancellation period to Consumers, all options must be available for a Consumer to provide notice of cancellation, including telephone, email, facsimile, or mail.

In cases where Gas Marketers have concerns with the added protection received by only accepting cancellation requests via facsimile, mail, or email, the Gas Marketer should consider recording telephone requests for cancellation. In every case of a cancellation request, a confirmation number must be provided to the Consumer, along with the telephone representative's name or identification number. The Consumer must be advised to maintain the confirmation number for their records and the Gas Marketer must maintain a log which will be available to the Commission upon request.

The addition and renumbering of Article 28 now reads as:

"Cancellation of Agreements

Article 28

A Gas Marketer shall accept a Consumer's request for cancellation when within the 10 day Cancellation Period, and under the terms of the contract without engaging in further sales or marketing activity under that Consumer's Agreement.

A Gas Marketer shall accept a Consumer's request for cancellation when within the Cancellation Period without making the process onerous on the Consumer. The Consumer must be able to exercise their rights under the Cancellation Period by telephone, facsimile, email, or mail.

When exercising a Cancellation Provision to cancel the Consumer's Agreement at the anniversary date of the Consumer's Agreement, the Consumer may provide written notice to the Gas Marketer at any time prior to the 60 days before the anniversary date of the Consumer's Agreement."

As a result of this addition, changes have been made to Article 23 of the Code of Conduct.

2.17 Article 30

Proposal – To amend Article 30 to add '*...and (/or) associated Commission Orders...*'

Gas Marketer Comments

No comments were submitted for this addition.

Commission Determination

Article 30 now reads:

"The primary responsibility for the observance of this Code **and associated Commission Orders** rests with the Gas Marketer. Failure to comply with, or breach of, the Code **and/or associated Commission Orders**, may result in fines or the suspension or revocation of the Gas Marketer's license for a period to be determined by the Commission. A breach of this Code may occur in the course of inducing a person to enter into an Offer or Consumer's Agreements, even in the absence of a contract.

Gas Marketers shall ensure that their Salespersons adhere to the standards required of a Gas Marketer as set out in the Code of Conduct for Gas Marketers, and shall be accountable for the behaviour and performance of their Salespersons."

2.18 Article 32

Proposal – To amend Article 32 to include:

"A list containing the major topics, which must be canvassed with the customer, is detailed below and it is up to the Gas Marketer to arrange the script. The topics must be addressed individually and where the topic calls for confirmation, the customer must so confirm.

- ***Identification of the Gas Marketer and confirmation that the marketer is not affiliated with Terasen Gas or the government.***

- ***Confirmation that the Customer understands that once the Gas Marketer contract is signed gas supply is provided by a Gas Marketer. This action is entirely voluntary and there is no obligation to switch gas suppliers.***
- ***Confirmation that the Customer is the account holder or authorized to enter into an agreement for the premise.***
- ***Confirmation that the Customer has a copy of the Gas Marketer agreement.***
- ***Confirmation that the Customer has knowledge of the product, price and term of the agreement.***
- ***Confirmation that the Customer may not save money.***
- ***Advisement of the Confirmation Letter that will be sent by Terasen Gas Inc.***
- ***Confirmation of the Customer's cancellation rights under the 10 day cancellation period."***

Gas Marketer Comments

No comments were submitted for this addition.

Commission Determination

Article 32 now reads:

"Third Party Verification is the form of a digitally recorded telephone call either initiated as an outbound call from the Gas Marketer to the Consumer or as an inbound call initially dialed by the sales agent to the Gas Marketer. In instances where the agent is present during the Third Party Verification, the Commission will consider this in the event of dispute adjudication. If the agent is present during the Third Party Verification, there must not be any communication between the Consumer and the Salesperson. The Third Party Verification may only be completed after the Salesperson has completed the sales presentation and the customer has executed the Consumer's Agreement, and before the Consumer's enrolment is submitted to the LDC.

The Commission will allow inbound and outbound calls for Third Party Verification. If the Third Party Verification call is carried out in the presence of a Salesperson, the Salesperson must not participate in, interrupt, or make comment to the Consumer during the Third Party Verification. Should such communication occur, the Third Party Verification must be terminated, and the Gas Marketer may not contact the Consumer again for a minimum of five days after that date. The Commission will be aware of the presence of the Salesperson during a Third Party Verification call and if any communication is held between the Consumer and the Salesperson, the Commission will deem the TPV to be invalid. The Third Party Verification must be the final step in the sale, the Salesperson must have already fully and clearly explained the terms and conditions of the Consumer's Agreement to ensure that at

the time of the Third Party Verification call the Consumer has received and reviewed all of the information, and the customer must have already executed the Consumer's Agreement.

The scripting, as set out below, will cover the topics specified by the Commission for this purpose, and be available to the Commission for review and approval. The digital file will be available to the Commission 3 days after the initial recording and retained by the Gas Marketer for the term of the Consumer's Agreement.

A list containing the major topics, which must be canvassed with the customer, is detailed below and it is up to the Gas Marketer to arrange the script. The topics must be addressed individually and where the topic calls for confirmation, the customer must so confirm.

- ***Identification of the Gas Marketer and confirmation that the Customer understands that the marketer is not affiliated with Terasen Gas or the government.***
- ***Confirmation that the Customer understands that once the Gas Marketer contract is signed gas supply is provided by a Gas Marketer. Confirmation that the Customer understands that this action is entirely voluntary and there is no obligation to switch gas suppliers.***
- ***Confirmation that the Customer is the account holder or authorized to enter into an agreement for the premise.***
- ***Confirmation that the Customer has a copy of the Gas Marketer agreement.***
- ***Confirmation that the Customer has knowledge of the product, price and term of the agreement.***
- ***Confirmation that the Customer understands that they may not save money.***
- ***Advisement of the Confirmation Letter that will be sent by Terasen Gas Inc.***
- ***Confirmation that the Customer understands their cancellation rights under the 10 day cancellation period."***

CODE OF CONDUCT

For

GAS MARKETERS

engaged in the

COMMODITY UNBUNDLING SERVICE
IN THE PROVINCE OF BRITISH COLUMBIA

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CODE OF CONDUCT
for GAS MARKETERS
engaged in the
COMMODITY UNBUNDLING SERVICE
IN THE PROVINCE OF BRITISH COLUMBIA

Introduction

Marketing of natural gas under the Commodity Unbundling Service takes place usually, though not exclusively, in a Consumer's place of business or home, by personal contact, or via telephone or internet marketing. Marketing of Gas under the Commodity Unbundling Service involves several parties including Gas Marketers, utilities and the Consumer of the Gas. The relationship between the various parties must be based on fair and ethical principles.

Scope

The purpose of this Code is to foster and uphold a sense of responsibility towards the Consumer and towards the general public by all those engaged in the Marketing of Gas to Low Volume Consumers participating in the Commodity Unbundling Service in the Province of British Columbia.

The Code applies to all practices used in the Marketing of Gas under the Commodity Unbundling Service for both residential and commercial Consumers. Where the practices are different between residential and commercial Consumers, it is noted.

The Code is to be applied in spirit as well as to the letter, bearing in mind the varying degrees of knowledge, experience and discriminatory ability of Consumers.

Basic Principles

All Marketing of Gas under the Commodity Unbundling Service will conform to the principles of fair competition as generally accepted in business, with particular regard to:

- the terms of the offer and the methods and form of the contact with the Consumer;
- the methods of presentation and the information on the supply; and
- the fulfilment of any obligation arising from the offer of purchase of Gas under the Commodity Unbundling Service.

Marketing of Gas under the Commodity Unbundling Service will be carried out in conformity with the laws of Canada and its provinces, where applicable.

Gas Marketers shall voluntarily assume responsibility towards the Consumer with respect to fair sales methods, accurate and truthful dissemination of information, and product value, and shall make every reasonable effort to ensure Consumer satisfaction.

Gas Marketers shall ensure that their Salespersons are fully informed as to the characteristics of the gas supplies and/or services offered to enable them to give the Consumer all necessary information to make informed decisions.

DEFINITIONS

For the purpose of this Code:

- **Act** means the Utilities Commission Act of British Columbia as amended from time to time.
- **Cancellation Period** is period within which the Consumer can cancel the Customer Agreement with no penalty incurred, being 10 calendar days from the date the enrolment is received by the Utility from the Gas Marketer. This will generally coincide with the date of the Terasen Gas confirmation letter to the Consumer.
- **Code** means this Code of Conduct for Gas Marketers.
- **Commission** means the British Columbia Utilities Commission.
- **Commodity Unbundling Service** is defined as the series of transactions involving the sale of gas by a Gas Marketer to a Gas utility for resale to a Low Volume Consumer arranged by Gas Marketer at a price agreed to between the Gas Marketer and the Low Volume Consumer.
- **Consumer** refers to any person or entity to which Gas Marketers direct or may direct their Gas Marketing activities under the Commodity Unbundling Service and includes both Consumers contracted with Gas Marketers or Consumers being supplied by a utility. Consumers include Residential and Commercial as defined by the local utility offering the Commodity Unbundling Service.
- **Consumer's Agreement(s)** means all written agreements and contracts between a Gas Marketer and a Consumer for the Marketing of Gas.
- **Consumer Information** means information relating to a specific Consumer obtained by a Gas Marketer or its Salesperson in the process of selling or offering to sell Gas to the Consumer, and includes information obtained without the consent of the Consumer.
- **Day(s)** means a calendar day(s) unless otherwise indicated.
- **End User** is an entity or person who utilizes Gas either as fuel or a raw material.
- **Enrolment** is the act of submitting the Consumer's Agreement to the LDC once it has been signed and verified by Third Party Verification in accordance with this Code.

- **Gas** means natural gas, substitute natural gas, synthetic gas, manufactured gas, propane-air gas or any mixture of any of them.
- **Gas Marketer** means an entity licensed by the Commission to engage in Gas Marketing to Low Volume Consumers under the Commodity Unbundling Service.
- **License** means a license issued under the Act by the Commission for the Marketing of Gas by a Gas Marketer to a Low Volume Consumer.
- **Licensed** means a person or entity holding a current valid License.
- **Local Distribution Company (LDC; Utility)** is a person/company enfranchised to distribute Gas within a defined territory.
- **Low Volume Consumer** – as defined by the Commission pursuant to section 71.1 of the Act. A “low-volume consumer” is defined as a person who, for the applicable period, either:
 - has, or is expected to have, a normalized annual consumption at one premise of less than 2,000 gigajoules of Gas per year; or
 - has chosen the Commodity Unbundling Service supply option, whatever the person’s annual consumption of Gas.
- **Marketing** for the purpose of this Code, means any activities intended to solicit a Consumer or potential Consumer to contract with a Gas Marketer, including providing for a Consumer’s consideration an Offer, and is characterized by door-to-door selling, internet, telemarketing, direct mail selling activities, and any other means by which a Gas Marketer or its Salesperson interacts directly with a Gas Consumer or potential Gas Consumer.
- **Offer** means a proposal to enter into an agreement made to an existing or prospective Consumer for the sale of Gas.
- **Premise** means the building or portion of a building that is provided with Gas through a single meter.
- **Regulation** means a regulation made under the Act.
- **Salesperson** means 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.
- **Third Party** with respect to Confidentiality of Consumer’s Agreements, means a person other than the Gas Marketer, and includes other Gas Marketers, affiliates, Consumers and other persons.
- **Third Party Verification (TPV)** is a digitally recorded telephone call between the Gas Marketer and the Residential Consumer to confirm the Consumer’s understanding of the Offer, Consumer’s Agreements, Confirmation Letter and Cancellation Rights.

THE TERMS OF THE CONSUMER'S AGREEMENTS AND THE OFFER

Accuracy

Article 1

The terms of any Offer and Consumer's Agreements shall be clear, so that the Consumer shall know the nature of the product and the benefits, the commitment and risks involved in agreeing to contract for Gas with the Gas Marketer. In particular, but without limiting the generality of the foregoing, any Offer and Consumer's Agreements will be accurate and truthful as to any representation made as to price, delivery arrangements, payment terms and conditions, quality and value of services, and quantity and performance and warranty conditions.

Price and Other Terms

Article 2

Whether an Offer is on cash or any other basis, the Offer and Consumer's Agreements shall clearly state the price and payment terms and any other financial provisions, including any deposit requirement, allocation of cost savings and/or services, and the nature and amount of any additional charges. The Offer and Consumer's Agreements shall clearly state agreement renewal provisions including default rollover provisions.

The Gas supply price must be a fixed price for 12 month intervals expressed in Canadian dollars per gigajoule. This price shall only apply to the sale of Gas and shall not include provision of other services.

If any other term or condition is subject to re-determination, indexation or arbitration, the Offer shall so state.

All Offers shall contain clear statements as to the quantities of Gas to be purchased, intended start-up and delivery dates, and the term of the agreement. The term shall not be less than one year or more than five years in length.

The Consumer's Agreements shall accurately and fully reflect the terms and conditions of the Offer as accepted by the Consumer.

No Offer shall require a sign-up fee to be taken in order to initiate a purchase of natural Gas arrangement under the Commodity Unbundling Service.

Obligations and Liabilities

Article 3

The Offer and Consumer's Agreements shall state the respective obligations, liabilities and risks of the Gas Marketer and Consumer in clear and understandable terms so that the Consumer may be sufficiently informed to understand them prior to executing Consumer's Agreements.

The Gas Marketer shall confirm with the Consumer that the Consumer has the signing authority to enter into the Consumer Agreement.

Protection

Article 4

This Code shall be interpreted in accordance with all applicable federal and provincial Consumer protection and business practice legislation.

Guarantees

Article 5

Offers and Consumer's Agreements may contain the words "guarantee", "guaranteed", "warranty" or "warranted", or words having the same or similar meanings, only if the terms of the guarantee as well as the remedial action open to the Consumer are clearly and succinctly set out in the Offer and Consumer's Agreements. Any such guarantee shall in no way diminish the rights which a purchaser would otherwise enjoy under Canadian or applicable provincial laws. The name and address of the guarantor shall be clearly and fully stated.

PRESENTATION OF THE OFFER

Identity of the Gas Marketer

Article 6

The name, permanent address, main British Columbia office address and the telephone number, fax number, e-mail and website addresses of the Gas Marketer shall be clearly and fully disclosed in any Marketing document or other Marketing literature distributed to the Consumer, including the Consumer's Agreements, so as to enable the Consumer to remain in touch directly with the Gas Marketer. Marketing documents and other literature containing only an accommodation address or a post office box number are not acceptable.

Article 7

All Salespersons shall immediately, truthfully and fully identify themselves and provide proof of licensing and bonding, to prospective Consumers. They shall also truthfully and fully indicate the purpose of their approach to the Consumers, identify the Gas Marketer with whom they are associated and indicate that they are Marketing Gas under the Commodity Unbundling Service.

Article 8

Neither a Gas Marketer nor any Salesperson shall mislead or otherwise create any confusion in the mind of a Consumer about the identity of the represented Gas Marketer, its promotion campaigns or trade mark, or those of competitors and/or LDCs.

Specifically, a Gas Marketer or any Salesperson when marketing a supply contract to a Consumer shall state that they are not representing the Consumer's local distribution company.

Integrity

Article 9

Salespersons shall in good faith assist Consumers to evaluate the nature of the transactions. Marketing efforts shall be organized and carried out so as not to:

- create confusion in the mind of the Consumer;
- mislead the Consumer or misrepresent any aspect of the Offer or Consumer's Agreements;
- abuse the trust of the Consumer;
- unduly pressure or harass the Consumer to enter into transactions; and
- exploit the lack of experience and knowledge of the Consumer.

Clarity

Article 10

Gas Marketers and Salespersons shall ensure that all terms of any Offer or Consumer's Agreements are communicated to the Consumer in writing in a clear, complete, accurate and understandable manner. Print which by its size or other visual characteristics is likely to negatively affect the legibility or clarity of any Offer or Consumer's Agreements, shall not be used.

Truthful Presentation

Article 11

The characteristics of any transaction shall include:

- price, deposit, credit and rebate terms;
- terms of payment and frequency;
- the beginning and end dates of the agreement;
- identity of and accessibility to the Gas Marketer;
- process for making a complaint to or enquiry of the Gas Marketer;
- delivery terms and conditions, during-and after-sales services;
- sources and reliability of supplies;
- terms of guarantee and warranty;
- liabilities and obligations of the Gas Marketer and Consumer;
- benefits/risks to Consumer;
- awards, bonuses, prizes, discounts and other incentives with respect to the Offer and Consumer's Agreements;
- Consumer's entitlement to receive a copy of this Code from the Gas Marketer;
- reasons for which the agreement may be terminated by the Gas Marketer;
- for Commercial Consumers, that the agreement is made with respect to the Consumer's Premise and terminates in the event the Consumer moves;
- for Residential Consumers, that the agreement is made with respect to the Consumer at the Consumer's Premise and in the event the Residential Consumer moves, the Consumer's Agreements will apply to the Consumer at their new Premise, provided that the new Premise is served with natural gas and that it is in an eligible service territory of the Utility providing the Commodity Unbundling Service;
- for Commercial Consumers, cancellation rights of the Consumer including a mandatory 10 day Cancellation Period; a Gas Marketer must not submit a Consumer enrolment to the LDC for processing until the 10 day Cancellation Period has expired. For Commercial Consumers, a 10 day Cancellation Period will not apply in the case of a single Commercial Consumer 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 Cancellation Period;
- for Residential Consumers, all cancellation provisions, for the purposes of the Commodity Unbundling Service;
- rights under the Consumer's Agreements with respect to assignments, transfers and sales to another Gas Marketer;
- any deposit, exit, late fees or any other charges payable to the Gas Marketer, if applicable;

- any other information required to be provided to the Consumer by Canadian or applicable provincial law; and
- all other terms of the Offer and Consumer's Agreements shall be presented completely, accurately and truthfully.

Telephone, Door to Door and Internet Marketing

Article 12

Telephone and Door to Door Marketing

When conducting telephone or door to door Marketing, the Gas Marketer shall comply with applicable laws. All telephone and door to door contacts must be made Monday to Friday between the hours of 9 a.m. and 9:30 p.m. or on Saturday and Sunday between the hours of 10:00 a.m. and 6:00 p.m. local time. Salespersons must immediately, truthfully and fully identify themselves to the prospective Consumers. They shall also immediately, truthfully and fully indicate the purpose of their approach to the Consumers, identify the Gas Marketer with whom they are associated and indicate that they are selling Gas under the Commodity Unbundling Service.

For telephone marketing, in the event that a recorded message constitutes a portion, or all of the sales process, the caller must first personally obtain the consent of the recipient to play a recorded offer. The Gas Marketer shall forward a written agreement to sign-up for service by telephone marketing and obtain from the Consumer a signed agreement in return. The Gas Marketer shall direct the LDC to switch the Consumer's Gas supply only once the Gas Marketer is in possession of the signed agreement from the Consumer.

Internet Marketing

The Gas Marketer shall forward a written agreement to sign-up for service by Internet marketing and obtain from the Consumer a signed agreement in return or obtain an electronic signature which complies with the B.C. Electronic Transactions Act. The Gas Marketer shall direct the LDC to switch the Consumer's Gas supply only once the Gas Marketer is in possession of the signed agreement from the Consumer. Electronic signatures which comply with the B.C. Electronic Transactions Act shall be accepted for Consumers committing to new agreements and for the renewal of existing agreements.

Complaints and Dispute Resolutions

Article 13

Should any Consumer complain that a Gas Marketer or Salesperson has engaged in any improper course of conduct pertaining to Marketing under the Commodity Unbundling Service, the Gas Marketer shall promptly investigate the complaint and take all appropriate and necessary steps in the circumstances to redress any and all wrongs disclosed by such investigation.

All Consumer's Agreements will include a provision that all disputes between the Gas Marketer and a Consumer arising out of the contract will be referred to and resolved by arbitration administered by the Commission or

other body appointed by the Commission for purpose of resolving such disputes and conducted according to the Commission's rules for the resolution of such disputes. The Gas Marketer shall pay a dispute resolution fee for each dispute referred to the Commission as determined by the Commission, except for a dispute where the Commission determines that the Consumer will be solely responsible for the dispute resolution fee.

All evidence in a dispute must be uploaded in the GEM system by the end of the ninth day following the initial logging of the dispute in GEM. This includes evidence provided by customers and by Gas Marketers. No evidence will be accepted for a dispute if received after the ninth day outstanding in GEM. If information is to be considered after this deadline, the party must submit a request for reconsideration in accordance with BCUC procedures.

Minimum evidence to be filed by a Gas Marketer includes the Consumer's Agreement, Notice of Appointment of Marketer, and Third Party Verification Recording for Consumer's Agreements signed after July 1, 2007.

SALESPERSON OPERATIONS

Respect of Privacy

Article 14

Marketing shall not be intrusive, aggressive, or harassing in nature. Marketing activity (excluding online Marketing) shall be limited to between Monday to Friday between the hours of 9:00 a.m. and 9:30 p.m. or on Saturday and Sunday between the hours of 10:00 a.m. and 6:00 p.m. local time. The right of a Consumer to refuse further discussion shall be respected. Posted signs restricting and/or prohibiting marketing and soliciting must be respected.

Honesty, Fairness and Veracity

Article 15

"A Salesperson shall not abuse the trust of individual Consumers or exploit their lack of experience or knowledge, nor play on ignorance or on fear, thereby exerting undue pressure on Consumers. All Offers must, therefore, be clear and honest.

A Salesperson shall not make any statement or take any measure which, directly or by implication, omission, ambiguity or exaggeration, is likely to mislead a Consumer with regard to the benefits of the Program, terms of the Offer, Consumer's Agreements or any other matter.

The Gas Marketer may not request that the Consumer provide their Terasen Gas account information, including their bill, until the Consumer expresses intent to enter into the Consumer Agreement.

A Salesperson shall, to the best of his or her knowledge and ability, give complete, accurate and clear answers to a Consumer's questions concerning the Offer or any other matter."

Article 16

A Salesperson shall ensure that the Consumers clearly and thoroughly understand the information given. The demonstration or explanation of the transaction under the Commodity Unbundling Service shall, as far as possible, be adapted to the needs and enquiries of the Consumers.

A Salesperson shall give sufficient time for Consumers to read the entire contract form thoughtfully and without interruption or harassment. Where a language or comprehension issue is likely to impede the Consumer's ability to fully understand the offer and the transactions, the Salesperson shall not execute the Consumer Agreement(s) and/or the Third Party Verification.

A Salesperson shall not make any verbal representations regarding agreements, rights or obligation unless those representations are contained in the Consumer's Agreements.

Gas Marketers shall ensure that their Salespersons are generally knowledgeable in the natural gas business, fully informed as to the characteristics of gas supplies and/or services offered and the Consumer's Agreement utilized by the Marketer, to enable them to give the Consumer all necessary information to make informed decisions.

Testimonials and Endorsements

Article 17

A Salesperson shall not refer to any testimonial, endorsement, or customer experience which is:

- not authorized by the person quoted, if in a private capacity;
- not genuine or unrelated to the experience of the person giving it;
- obsolete or otherwise no longer applicable;
- taken out of context; or
- used in any way likely to mislead the Consumer.

Comparisons and Fair Competition

Article 18

A Salesperson shall refrain from using comparisons, statistics, and visual material which might mislead and/or which are incompatible with the principles of fair competition. Points of comparison shall be fairly selected and shall be based on facts which can be substantiated. All comparisons, statistics, and visual material must be clearly and accurately labelled.

All comparisons, statistics, and visual material that are provided to a Consumer must be actual data obtained from the LDC and based only on actual data for British Columbia.

All statements or promises made in any promotional material must be complete and in accordance with actual conditions, situations and circumstances existing at the time the promotion is made. Any data referred to must be competent and reliable and support the specific claim for which it is cited. Illustrations of historical data based on past records of more than five years are not permitted, and no projections of future pricing may be presented to the Consumer.

Article 19

A Salesperson shall not discredit any competing company, firm or individual, or any supplies or services provided by such parties, directly or by implication. Accurate, complete and truthful comparisons, however, are acceptable. When price comparisons are used, they must be factual, complete and verifiable.

Article 20

A Salesperson shall not induce any Consumer to breach a contract with another Gas Marketer.

Article 21

A Salesperson shall not take unfair advantage of the goodwill attached to the trade name or symbol of another Gas Marketer or product.

A Salesperson shall clearly indicate that the Offer is not being made by a regulated Gas distributor, and not seek to mislead or otherwise create any confusion in the mind of a Consumer about the identity of the Gas Marketer, or about the trademarks of the regulated distributor or of competitors.

Article 22

A Gas Marketer shall not engage in any false or misleading advertising or publish any material which may have the effect of misleading potential Consumers.

CONSUMER INFORMATION

Information to be maintained by a Gas Marketer

Article 23

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 Consumer.

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 that Gas Marketer;
- A list of Consumers;
- A log of cancellation requests, including confirmation numbers provided to Consumers and the name or identification number of the representative who accepted the request for cancellation;
- The Notices of Appointment of Marketer signed by its Consumers;
- Copies of the Gas Marketer's supply contract with each Consumer containing the Consumer's written signature; and
- Copies of the Commercial Consumer's written consent waiving the 10 day Cancellation Period.

In addition, the LDC has a right to audit any Notices of Appointment of Marketers and the Gas Marketer's supply contract with each Consumer by providing prior written notice of five business days to a Gas Marketer.

Request for Historical Gas Consumption Information

Article 24

Prior to submitting a request to the LDC for a Consumer's historical gas consumption data, a Gas Marketer must obtain the Consumer's signature on a consent form and provide a copy of this signed consent form to the LDC.

Confidentiality of Consumer Information

Article 25

A Gas Marketer must comply with the Personal Information Protection Act requirements of British Columbia.

A Gas Marketer shall not disclose Consumer information without the consent of the Consumer in writing, except where the Consumer information is required to be disclosed for the following purposes:

- For billing, collections or Gas supply management purposes (i.e. consumption information);
- For law enforcement purposes;
- For the purpose of complying with a legal requirement or an order of a regulatory body exercising jurisdiction over the Gas Marketer or the Consumer;
- For the processing of past due accounts of the Consumer which have been passed to a debt collection agency; or
- In the event that a Gas Marketer assigns, sells or transfers its list of Consumers and its existing agreements with Consumers to another licensed Gas Marketer.

Consumer information may be disclosed where the information has been sufficiently aggregated such that an individual's information cannot reasonably be identified.

A Gas Marketer shall inform Consumers that information may be released to a Third Party without the Consumer's consent for the purposes listed above.

A Gas Marketer shall not use Consumer information for one purpose from a Consumer for any other purpose without the written consent of the Consumer.

AGREEMENTS AND CONTRACTS

Agreement Specifications

Article 26

The Consumer's Agreements, in accompaniment with the Notice of Appointment of Marketer, will be clearly designated as an "Agreement" or a "Contract". The terms "Application" or "Enrollment" do not accurately reflect the agreement made between the Marketer and the Consumer. There should be no confusion in the mind of the customer that this is a binding contract and not an application or enrollment.

The Consumer's right to cancel without penalty must be referred to as the "Ten Day Cancellation" provision and must be clearly stated in the Consumer's Agreement, prominently situated above the Consumer's signature line. Instructions must be included on how the Consumer can exercise this option.

The first page of the agreement between the Gas Marketer and a Consumer must accurately summarize and clearly state the essential elements of the Offer including:

- Price (Canadian \$ per gigajoule);
- Term (length in years, start and end dates;

- Renewal provisions (type, frequency, dates) including default rollover provisions;
- Cancellation provisions;
- Penalties and terms for early termination of the contract, including minimum contract term, and the requirement that the Consumer's Agreements may only be terminated on their anniversary date; and
- Conditions which may affect the price or term of the Offer.

The minimum contract term is one year with a maximum contract term of no more than five years and the dates for commencement of service and termination of service must coincide with program entry dates.

Agreement Renewals

Article 27

The Consumer's Agreements should clearly set out the contract renewal provisions including those for default rollover.

- The renewal date shall be such that it coincides with a LDC program entry date. Notice periods for contract renewal should require the Gas Marketer to give notice to the Consumer no more than 120 days and no less than 90 days prior to the applicable renewal date.
- The Consumer shall have 30 days after receipt of written notice from the Gas Marketer to select renewal terms or cancel the contract.
- Where no instructions are received by Terasen Gas from the current Gas Marketer of record prior to the cut-off date for the applicable renewal date, and where a valid enrolment for the same Consumer is not received by Terasen Gas from another Marketer, the Consumer's Agreement will be evergreened, with the same fixed price for a 12 month period.
- The timing of notices need to align with notice periods on entry dates to permit a Consumer to change Gas Marketers upon expiry or cancellation of an existing agreement.

If the Consumer has cancelled its agreement and wishes to return to Utility supply, the Gas Marketer must notify the LDC within two business days of receiving notice from the Consumer.

Cancellation of Agreements

Article 28

A Gas Marketer shall accept a Consumer's request for cancellation when within the 10 day Cancellation Period, and under the terms of the contract without engaging in further sales or marketing activity under that Consumer's Agreement.

A Gas Marketer shall accept a Consumer's request for cancellation when within the Cancellation Period without making the process onerous on the Consumer. The Consumer must be able to exercise their rights under the Cancellation Period by telephone, facsimile, email, or mail.

When exercising a Cancellation Provision to cancel the Consumer's Agreement at the anniversary date of the Consumer's Agreement, the Consumer may provide written notice to the Gas Marketer at any time prior to the 60 days before the anniversary date of the Consumer's Agreement.

Transfer of Agreements

Article 29

A Gas Marketer shall not assign, sell or otherwise transfer the Consumer's Agreements to another person who is not a licensed Gas Marketer.

Within 30 days of assignment, sale or transfer of the administration of an agreement to another licensed Gas Marketer, the affected Consumer must be notified of the new Gas Marketer's address for service, telephone number and the Consumer complaints process, if these have changed.

The assignment, sale or transfer of a Gas Marketer's Consumer's Agreements to another Gas Marketer shall be approved in advance by the Commission.

Responsibility for Code Observance

Article 30

The primary responsibility for the observance of this Code and associated Commission Orders rests with the Gas Marketer. Failure to comply with, or breach of, the Code and/or associated Commission Orders, may result in fines or the suspension or revocation of the Gas Marketer's license for a period to be determined by the Commission. A breach of this Code may occur in the course of inducing a person to enter into an Offer or Consumer's Agreements, even in the absence of a contract.

Gas Marketers shall ensure that their Salespersons adhere to the standards required of a Gas Marketer as set out in the Code of Conduct for Gas Marketers, and shall be accountable for the behaviour and performance of their Salespersons.

Article 31

The Utility shall refrain from conducting business with anyone who is not licensed in the province of British Columbia and does not strictly adhere to this Code.

Third Party Verification

Article 32

Third Party Verification is the form of a digitally recorded telephone call either initiated as an outbound call from the Gas Marketer to the Consumer or as an inbound call initially dialed by the sales agent to the Gas Marketer. In instances where the agent is present during the Third Party Verification, the Commission will consider this in the event of dispute adjudication. If the agent is present during the Third Party Verification, there must not be any communication between the Consumer and the Salesperson. The Third Party Verification may only be completed after the Salesperson has completed the sales presentation and the customer has executed the Consumer's Agreement, and before the Consumer's enrolment is submitted to the LDC.

The Commission will allow inbound and outbound calls for Third Party Verification. If the Third Party Verification call is carried out in the presence of a Salesperson, the Salesperson must not participate in, interrupt, or make comment to the Consumer during the Third Party Verification. Should such communication occur, the Third Party Verification must be terminated, and the Gas Marketer may not contact the Consumer again for a minimum of five days after that date. The Commission will be aware of the presence of the Salesperson during a Third Party Verification call and if any communication is held between the Consumer and the Salesperson, the Commission will deem the TPV to be invalid. The Third Party Verification must be the final step in the sale, the Salesperson must have already fully and clearly explained the terms and conditions of the Consumer's Agreement to ensure that at the time of the Third Party Verification call the Consumer has received and reviewed all of the information, and the customer must have already executed the Consumer's Agreement.

The scripting, as set out below, will cover the topics specified by the Commission for this purpose, and be available to the Commission for review and approval. The digital file will be available to the Commission 3 days after the initial recording and retained by the Gas Marketer for the term of the Consumer's Agreement.

A list containing the major topics, which must be canvassed with the customer, is detailed below and it is up to the Gas Marketer to arrange the script. The topics must be addressed individually and where the topic calls for confirmation, the customer must so confirm.

- Identification of the Gas Marketer and confirmation that the Customer understands that the marketer is not affiliated with Terasen Gas or the government.
- Confirmation that the Customer understands that once the Gas Marketer contract is signed gas supply is provided by a Gas Marketer. Confirmation that the Customer understands that this action is entirely voluntary and there is no obligation to switch gas suppliers.
- Confirmation that the Customer is the account holder or authorized to enter into an agreement for the premise.
- Confirmation that the Customer has a copy of the Gas Marketer agreement.
- Confirmation that the Customer has knowledge of the product, price and term of the agreement.

- Confirmation that the Customer understands that they may not save money.
- Advisement of the Confirmation Letter that will be sent by Terasen Gas Inc.
- Confirmation that the Customer understands their cancellation rights under the 10 day cancellation period.

Modification to the Code

Article 33

The Code shall be reviewed and modified if required at an annual meeting to be held prior to May 1 of each year. All changes will require the approval of the Commission.