

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** **A-8-10**

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

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



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

and

**Active Renewable Marketing Limited
Breach of the Code of Conduct for Gas Marketers
Marketing Materials**

BEFORE: D.A. Cote, Commissioner May 20, 2010

O R D E R

WHEREAS:

- A. In November 2009 the BC Utilities Commission (Commission) received a copy of Active Renewable Marketing Limited's (Active) brochure, Natural Gas Price Agreement Form (Agreement Form), and accompanying Terms and Conditions. The brochure contained a graph that illustrated Terasen Gas Inc.'s (Terasen Gas) historical natural gas rates from January 2000 through January 2009. The graph on the brochure appears to not be in compliance with Article 18 of the Code of Conduct for Gas Marketers (Code of Conduct), which states in part, "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..."; and
- B. By Letter L-104-09 dated November 19, 2009, the Commission requested Active submit a list of customers enrolled under the Customer Choice Program from May 1, 2009 to November 18, 2009; and
- C. Active submitted the requested information on November 20, 2009 noting that the list contained customers currently flowing with Active and it excluded those that had signed up but cancelled from May 1, 2009 to November 18, 2009. Active's response established that it was marketing and enrolling both residential and commercial customers during the noted period; and
- D. By letter dated December 16, 2009, the Commission requested comment from Active to identify, if any, potential compliance issues relating to the use of the Agreement Form and brochure; confirmation from Active when it began distributing these materials, when it ceased distribution, and how many customers received the materials. Further, the Commission requested Active to confirm if it distributed its brochure in lieu of the Customer Choice Standard Information Booklet; and

- E. On December 23, 2009, Active stated that it believed the Agreement Form to be fully compliant; however, it acknowledged that “the graph on the back of the brochure has too much data and will make necessary changes to be in full compliance with the board.” It also stated that, “Active began distributing the received brochure in mid to late September 2009 and has not been actively selling our residential program since October 17, 2009”; and
- F. On January 28, 2010 the Commission issued an additional information request on the marketing materials due to ambiguity in Active’s initial response to the queries; and
- G. Active provided its response on February 4, 2010 and advised the Commission that: a) approximately 120 residential customers received both the brochure and the Agreement Form; b) Active distributed the brochure from late September 2009 and ceased distribution on October 17, 2009; c) the brochure was provided to residential customers only; and d) the brochure was not distributed in lieu of the Customer Choice Standard Information Booklet; and
- H. The Commission noted in its letter dated March 10, 2010 that by distributing the brochure, Active was in potential breach of Article 18 of the Code of Conduct; and
- I. In the March 10, 2010 letter, the Commission requested Active provide its written comments on the potential violation of Article 18 of the Code of Conduct. Active was also requested to provide a list of the 120 residential customers who received both the brochure and the Agreement Form, and are currently enrolled with Active. Further, the Commission asked Active to propose what action(s) the Commission should take as appropriate penalty or remedy to the non-compliance, if applicable; and
- J. In Active’s response dated March 24, 2010, it stated that, “Active does understand that as per the Code of Conduct only five (5) years worth of historical data is permitted on the illustration and Active provided nine (9). Active admits this was an oversight but again stresses that this was not in any way meant to mislead or confuse customers but to give them the exact facts and figures.” Active explained that it “immediately made all the requested changes” to its materials from a review by the Commission in February 2010.
- K. Active did not propose an appropriate penalty or remedy to the non-compliance; and
- L. Section 71.1 (3) of the *Utilities Commission Act* (UCA) states that, “A gas marketer must comply with the commission rules issued under subsection (10) and the terms and conditions, if any, attached to the gas marketer licence held by the gas marketer”; and
- M. Commission Order G-90-03 established Rules for Gas Marketers (Rules), which were revised in Commission Order G-114-08 and most recently in Order A-6-09; and

N. Section 8.0 of the Rules states that, "All Gas Marketers must comply with the Rules and the Code of Conduct for Gas Marketers approved by the Commission and as may be amended by the Commission from time to time. Gas Marketers in violation of the Rules or the Code of Conduct may be subject to penalties and licence suspension or cancellation."

NOW THEREFORE pursuant to Rules for Gas Marketers and section 71.1 of the *Utilities Commission Act* the Commission finds that by distributing the brochure with a graph containing Terasen Gas's historical natural gas rates for nine years, Active did not comply with Article 18 of the Code of Conduct. The Commission has requested historical sales information from Terasen Gas and will consider this matter further once this information has been received.

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of May 2010.

BY ORDER

Original signed by:

D. A. Cote
Commissioner