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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER A-17- 10**

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

and

**A Complaint Regarding Summitt Energy BC LP
and Summitt Agent Huang Zhanxin**

BEFORE: L.F. Kelsey, Commissioner August 26, 2010
D.A. Cote, Commissioner

O R D E R

WHEREAS:

- A. On April 20, 2010, a consumer (Complainant) filed a complaint with the British Columbia Utilities Commission (Commission) about a gas sales call by a Summitt Energy BC LP (Summitt) salesperson, Mr. Huang Zhanxin (also spelled Zhanxie) (Mr. Huang) who called on the Complainant's residence on April 19, 2010; and
- B. Summitt is a licensed Gas Marketer, pursuant to Order A-21-09A; and
- C. The Commission's Code of Conduct for Gas Marketers (Code) was approved by Order A-4-09; and
- D. Summitt submitted Compliance Notice – CB 5173 dated April 21, 2010, and on May 13, 2010 responded to a number of information requests from the Commission; and
- E. Summitt filed its Final Submission on June 11, 2010; and
- F. On June 23, 2010, the Complainant confirmed they had no additional comments; and
- G. The Commission has considered the submissions and for the Reasons for Decision that are attached as Appendix A to this Order has determined that Summitt needs to file a report reviewing its supervision of salespersons and to provide further clarification and direction to its Sales Managers and salespersons.

NOW THEREFORE the Commission orders as follows:

- 1. The Commission directs Summitt to file a report within 30 days of the date of this Order, reviewing why its supervisory structure failed to prevent Mr. Huang from contacting consumers without an identification badge and identifying the changes it has made and will make so that it can exercise more effective control over its salespersons in British Columbia.

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2. The Commission dismisses the complaint with respect to the lack of visual identification.
3. The Commission dismisses the complaint with respect to the issue that the Salesperson inappropriately asked to see the Complainant's gas bill.
4. The Commission determines that Mr. Huang misrepresented the purpose of his sales call on the Complainant, and so breached Articles 7 and 9 of the Code.
5. Summitt is directed to send a letter to each of its National, Regional and other Sales Managers and salespersons who are active in British Columbia, that explains how salespersons should describe the purpose of their calls on consumers, how to identify the Customer Choice Program and contracts under it, and the proper and somewhat restricted use of "price protection" and similar terms; and to have each Sales Manager and salesperson sign the letter confirming that they have read and accept the letter. Summitt should review the form of the letter with Commission staff prior to sending it out.
6. As a condition of Summitt's Gas Marketer Licence and an amendment to Order A-21-09A, Summitt is directed to prevent any salesperson who has not signed and returned a copy of the letter within 30 day of the date of this Order, from contacting customers under the Customer Choice Program on behalf of Summitt until returning a signed letter to Summitt. If a Sales Manager does not sign and return the letter within the same 30 days, Summitt will prevent all salespersons who report through that Sales Manager from contacting customers until the Sales Manager has returned a signed letter.
7. Summitt will provide the Commission with a copy of each signed letter within 45 days of the date of this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of August 2010.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment



IN THE MATTER OF

SUMMITT ENERGY BC LP

COMPLAINT REGARDING SUMMITT AGENT HUANG ZHANXIN

REASONS FOR DECISION

August 26, 2010

BEFORE:

L.F. Kelsey, Commissioner
D.A. Cote, Commissioner

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1.0 INTRODUCTION

A natural gas consumer (Complainant) filed a complaint with the British Columbia Utilities Commission (Commission) about a sales call at her residence on April 19, 2010 by Mr. Zhanxin (also spelled Zhanxie) Huang (Mr. Huang), who is a salesperson for Summitt Energy BC LP (Summitt).

Summitt is a licensed Gas Marketer in British Columbia under Order A-21-09A. Gas Marketers and their salespersons are required to comply with the Commission's Code of Conduct for Gas Marketers (Code), which was approved by Order A-4-09. The Code was subsequently amended by Order A-11-10 dated June 17, 2010, but the changes are not relevant to the complaint.

The first issue of the complaint is that Mr. Huang did not wear visible identification. The Commission finds Mr. Huang identified himself as a Summitt salesperson, and dismisses the complaint with respect to this issue. However, the Commission requires Summitt to file a report reviewing its supervision of salespersons.

The second issue of the complaint is that Mr. Huang misrepresented the purpose of his call, by asking to check if the consumer had "price protection" on Complainant's bill. The Commission dismisses the complaint with respect to the issue whether Mr. Huang's opening request was a breach of the Code's requirement that a salesperson not request account information until the customer has expressed an intent to enter into a contract. The Commission finds the complaint that Mr. Huang did not comply with Articles 7 and 9 of the Code because he did not accurately disclose the purpose of his call, is substantiated. In addition to the retraining that Summitt has undertaken, the Commission directs Summitt to provide its Sales Managers and salespersons with letters giving further clarification and direction about how to identify the Customer Choice Program and contracts, and to have them sign and return the letters.

2.0 COMPLAINT AND SUBMISSIONS

The complaint was filed on April 20, 2010. As the Complainant is a senior staff member of the Commission, the processing of the complaint was handled by a separate department, the Engineering and Energy Markets Department. Written submissions were used to process the complaint.

Summitt submitted Compliance Notice – CB5173 dated April 21, 2010 regarding the matter, and on May 13, 2010 responded to several information requests (IRs) from the Commission.

Summitt filed its Final Submission on June 11, 2010, and on June 23, 2010, the Complainant confirmed that she had no additional comments.

3.0 COMPLAINT ISSUE ABOUT LACK OF VISUAL IDENTIFICATION

The Complainant states that Mr. Huang initiated the discussion by stating he was from Summitt. However, he was not wearing an identification badge or clothing with Summitt's name or logo, and refused to leave a Summitt business card. Summitt agrees that the salesperson was not wearing proper identification (Response to IR 11). Mr. Huang indicated his

lack of an identification badge was due to being new to the job, while Summitt states that Mr. Huang had forgotten his identification badge on the day in question (Response to IR 10).

Commission Determination

Article 7 of the Code states:

“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 30 of the Code states that Summitt, as the licensed Gas Marketer, is accountable for the behaviour and performance of its salespersons.

Summitt describes the organizational structure that it uses to supervise its salespersons in British Columbia, saying that it contracts with independent sales agencies to sell door-to-door on its behalf (Responses to IRs 1, 2, 3, 4). Mr. Huang is associated with Canadian Dragon BC, one of three sales agencies that Summitt uses in British Columbia. The individual sales agents report back to Summitt through several levels of national, regional and local Sales Managers who are responsible for recruiting, training and the day-to-day supervision of agents. This includes providing identification badges, ensuring proper marketing materials and implementing compliance notices. Mr. Philip Hui Lui (Mr. Lui) is identified as the Regional Sales Manager contracted by Canadian Dragon BC to operate the sales office, and is identified on the Summitt Energy Independent Contractor Services Agreement (Services Agreement) as the “Authorized Summitt Trainer.” No explanation was provided about the training and qualifications that he has or needed to obtain this designation.

The Commission has concerns about the way in which Summitt manages its salespersons in British Columbia. No contract with Canadian Dragon BC was provided, and in fact the Services Agreement indicates Mr. Huang is an independent contractor for Summitt directly, and not for some intermediate sales agency. The several levels of Sales Managers raise questions whether Summitt can effectively ensure proper training, supervision and compliance with the Code.

The Services Agreement and Summitt’s training materials clearly require agents to wear an identification badge and clothing with the Summitt logo. Moreover, Mr. Huang was working under the supervision of Mr. Liu (Response to IR 9). The fact that Mr. Huang was actively soliciting customers without proper visual identification clearly indicates that Summitt’s training and supervision in this area was deficient. It is particularly concerning that, while it appears that Mr. Liu also signed the Compliance Notice, only Mr. Huang was the subject of the Compliance Notice and any disciplinary action appears to be limited to the salesperson. The Commission believes that in order to effectively ensure that salespersons comply with the Code and other requirements, there also need to be consequences for the various levels of Sales Managers when a salesperson breaches these requirements. **The Commission directs Summitt to file a report within 30 days of the date of the Order that accompanies these Reasons, reviewing why its supervisory structure failed to prevent Mr. Huang from contacting consumers without an identification badge and identifying the changes it has made and will make so that it can exercise more effective control over its salespersons in British Columbia.**

In the event of future complaints, the Commission may need to suspend the ability of some or all of Summitt’s salespersons to solicit new customers until the Commission is convinced that Summitt is able to ensure that its salespersons will comply with the Code. Ongoing problems with Code compliance may put the continuation and renewal of Summitt’s Gas Marketer licence at risk.

Returning to the complaint about lack of visual identification, Article 7 of the Code states that all salespersons “shall immediately, truthfully and fully identify themselves and provide proof of licensing and bonding.” An identification badge that identifies the company as a licensed Gas Marketer is the proper way to fulfil this requirement. Mr. Huang provided no documentation that he represented a licensed and bonded Gas Marketer. Nevertheless, he did immediately and clearly state that he was with Summitt, and so the Commission accepts that he complied with at least the spirit of Article 7. **Therefore, the Commission dismisses the complaint with respect to the lack of visual identification.**

4.0 COMPLAINT ISSUE ABOUT MISREPRESENTING PURPOSE OF CALL

This complaint raises two issues, one relating to an immediate request to see the consumer’s bill and a second issue about how the purpose of the sales call was stated.

4.1 Request to see the Customer’s Bill

The Complainant states that Mr. Huang asked whether Complainant had “price protection” on her bill.

Summitt submits that asking a consumer whether they are already participating in the Customer Choice Program is different from asking to see their bill, and helps determine whether the agent should proceed with the sales presentation (Responses to IRs 19, 19.2).

Commission Determination

Article 15 of the Code states that a Gas Marketer may not request the consumer to provide Terasen Gas Inc. (Terasen Gas) account information, including their bill, until the consumer expresses an interest to enter into an agreement with the Gas Marketer. Although a consumer would likely need to check their bill in order to respond to Mr. Huang’s question, this is not quite the same as asking for the bill itself or other account information. The Commission is unable to conclude that Mr. Huang specifically asked to see the bill. **Therefore, the Commission dismisses the complaint with respect to the issue that the Salesperson inappropriately asked to see the bill.**

4.2 Statement of the Purpose of the Sales Call

The other complaint issue is whether the Mr. Huang misrepresented the purpose of the sales call by his question whether the consumer had “price protection.” The Complainant states the view that the agent was in fact seeking to convince the consumer to enter into a contract with Summitt for the purchase of natural gas under the Customer Choice Program.

The Summit Training Material requires a salesperson to state that he is marketing gas under the Customer Choice Program, and to provide every customer with a clear and accurate understanding of the Summitt program (Response to IR 14).

Summitt did not respond directly to a question whether “price protection” is a sufficiently accurate way to refer to the Customer Choice Program. Instead, Summitt submits that the term “price protection” can be used to describe the contract terms that Summitt offers, as long as features of the program are explained accurately and clearly. Summitt states that the customer purchases a fixed price natural gas contract in order to be protected from the potential of future gas price increases (Response to IR 19.1).

Summitt has increased its Compliance Department's refresher training to four times per year, has provided retraining to Mr. Huang and has implemented a Compliance Point System for complaints (Responses to IRs 11, 15, 22). In its June 10, 2010 Final Submission, Summitt states its Director of Compliance completed an in-person compliance training session for all active agents in British Columbia in May 2010, and that Mr. Huang had not received any further complaints.

Commission Determination

Article 7 of the Code requires a salesperson to truthfully and fully indicate the purpose of their approach to the consumer, and to indicate that they are marketing gas under the commodity unbundling program. It is clear that Mr. Huang, by referring to "price protection", did not fulfil these requirements of Article 7. The issue is that "price protection" is not the recognized name of the program, nor is it an accurate description of the contract that Mr. Huang was trying to market.

Identifying the subject of the sales call in this way could serve to create confusion in the mind of and mislead the consumer, which is prohibited by Article 9 of the Code. There is also the practical advantage that properly referring to the Customer Choice Program should help the consumer relate what the salesperson has to say, to educational material that Terasen Gas may have sent out or which is available on the Terasen Gas website. For example, this would help the consumer more accurately respond to a question from the salesperson whether they are already enrolled in the Customer Choice Program.

The Commission recognizes that "price protection" may legitimately be advanced as a potential benefit of a fixed price contract under the Customer Choice Program. The distinction is that the Customer Choice Program should be identified by name and the nature of fixed price contracts offered under the program described as such, in order to set the context for the sales call. Only then, when the salesperson goes on to discuss the volatility of gas prices and Terasen Gas commodity rates and how a fixed price contract will address this volatility, should "price protection" and similar terms be expressed.

The Commission notes that the experience does not appear to have caused significant problems for the Complainant, Mr. Huang has been retrained and monitored, and Summitt has enhanced its compliance training and enforcement. However, in part because of questions about the effectiveness of Summitt's oversight of its salespersons and its apparent lack of concern about using the term "price protection" to identify the Customer Choice Program and contracts under it, the Commission concludes that Summitt needs to provide further clarification and direction to its Sales Managers and agents.

The Commission determines that Mr. Huang misrepresented the purpose of his sales call on the Complainant, and so breached Articles 7 and 9 of the Code.

Summitt is directed to send a letter to each of its National, Regional and other Sales Managers and salespersons who are active in British Columbia, that explains how salespersons should describe the purpose of their calls on consumers, how to identify the Customer Choice Program and contracts under it, and the proper and somewhat restricted use of "price

protection" and similar terms; and to have each Sales Manager and salesperson sign the letter confirming that they have read and accept the letter. Summitt should review the form of the letter with Commission staff prior to sending it out.

As a condition of Summitt's Gas Marketer Licence and an amendment to Order A-21-09A, Summitt is directed to prevent any salesperson who has not signed and returned a copy of the letter within 30 days of the date of the Order that accompanies these Reasons, from contacting customers under the Customer Choice Program on behalf of Summitt until returning a signed letter to Summitt. If a Sales Manager does not sign and return the letter within the same 30 days,

Summitt will prevent all salespersons who report through that Sales Manager from contacting customers until the Sales Manager has returned a signed letter.

Summitt will provide the Commission with a copy of each signed letter within 45 days of the date of the Order that accompanies these Reasons.