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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER A-1-13**

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

and

Active Energy Corp. – Compliance Inquiry
Customer Choice Program

BEFORE: L.F. Kelsey, Commissioner
D.A. Cote, Commissioner January 30, 2013
A.A. Rhodes, Commissioner

ORDER

WHEREAS:

- A. On March 8, 2012, the British Columbia Utilities Commission (Commission) issued Order A-5-12 that established a Compliance Inquiry into 24 customer disputes against Active Renewable Marketing Ltd. (Active Energy). The Inquiry was established to investigate disputes alleging forgery or unauthorized signatures, and the steps taken by Active Energy in dealing with these allegations. The Business Practices and Consumer Protection Authority (Consumer Protection BC) was retained to complete an Inquiry report (Report);
- B. Consumer Protection BC submitted its Report to the Commission on June 18, 2012;
- C. Upon receipt and review of the Report, on August 27, 2012, Active Energy filed an Application to expunge the Report (Application), and as a result, the Commission issued Order A-14-12 establishing a regulatory timetable to hear submissions on the Application;
- D. On September 25, 2012, the Commission's Compliance Team filed their submission on Active Energy's Application;
- E. On October 18, 2012, the Commission convened to consider Active Energy's Application. Active Energy and the Compliance Team proposed an adjournment of the Inquiry to allow more time to continue their work to:
 - a. resolve the complaints identified in Recital A, as well as similar complaints received since the issuance of Order A-5-12;
 - b. develop a comprehensive report to the Commission to identify all the complaints received and the steps taken to investigate and resolve the complaints; and
 - c. develop a protocol to review the contract activity from the same contract transaction period from which the complaints have arisen to identify any remaining concerns and to resolve any future complaints relating to allegations of fraud or unauthorized signatures that may arise.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** A-1-13

2

- F. On October 30, 2012, by Order A-30-12, the Commission adjourned the Inquiry pending the completion of the work and report by Active Energy and the Compliance Team. The Commission directed Active Energy and the Compliance Team to report back by no later than November 13, 2012;
- G. On November 15, 2012, Active Energy and the Compliance Team submitted a Proposed Settlement Agreement for the Commission's review;
- H. On December 3, 2012, by Order A-32-12A, the Commission determined that approval of the Proposed Settlement Agreement is not in the public interest and suggested modifications to the Proposed Settlement Agreement;
- I. On December 11, 2012, Active Energy and the Compliance Team appeared before the Commission Panel to discuss the process and timing for modifying the Proposed Settlement Agreement;
- J. On December 12, 2012, by Order A-33-12, the Commission required Active Energy and the Compliance Team to submit the modified Proposed Settlement Agreement by January 11, 2013; and
- K. On January 11, 2013, Active Energy and the Compliance Team submitted the modified Proposed Settlement Agreement for the Commission's review.

NOW THEREFORE the Commission orders as follows:

- 1. The Proposed Settlement Agreement, submitted on January 11, 2013, is approved, for the Reasons set out in Appendix A.
- 2. The Proposed Settlement Agreement is to be made available to members of the public, except for the information contained in "Active Energy Complaints Vol. 1" and "Active Energy Complaints Vol. 2", which will be held confidential as these filings contain personal and commercially-sensitive information about customer accounts. The relevant information in "Active Energy Complaints Vol. 1" and "Active Energy Complaints Vol. 2" will be made available to the respective customers only.
- 3. The Consumer Protection BC Report dated June 18, 2012 is expunged from the record of this Proceeding and will not be made public.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of January 2013.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment

Active Energy Corp. – Compliance Inquiry
Customer Choice Program

REASONS FOR DECISION

The British Columbia Utilities Commission (Commission) Panel has reviewed the Proposed Settlement Agreement (PSA) and the customer comments received in this Proceeding and accepts the PSA for the following reasons:

1. The PSA provides a sufficient record to facilitate future decision-making:
 - The PSA includes a consolidated record for each complaint within the scope of the Compliance Inquiry established under Order A-5-12 and each forgery and unauthorized signature complaint made subsequent to Order A-5-12 up to November 1, 2012; and
 - The PSA includes, for each complaint, a record of the resolution that has been reached or proposed process for resolving the complaint and a description, where applicable, of how each claimant would be notified of the outcome of the Compliance Inquiry, the implications for their complaint, and their further options under Commission process.
2. The PSA establishes processes that allow for customer input and flexibility in handling complaints/disputes:
 - The majority of customers covered under the PSA will have the opportunity to provide input on the proposed resolution for their dispute; and
 - Under the PSA, a pending unresolved complaint would be adjudicated by the Commission if the claimant wished to pursue the Commission's dispute process to a final adjudication by the Commission. Active Energy agrees to be bound by the Commission's determination in those cases.
3. The PSA proactively manages future complaints/disputes alleging forgery or unauthorized signature:
 - The PSA establishes a process to notify customers who signed agreements with Active Energy before September 1, 2010 under which the gas commenced flowing on November 1, 2012 or later; and
 - Under the PSA, complaints related to forgery or unauthorized signature arising after November 1, 2012 and unresolved by Active Energy would be adjudicated by the Commission. Active Energy agrees to be bound by the Commission's determination in those cases.
4. The PSA includes appropriate sanctions against Active Energy.
5. The PSA adequately addresses Active Energy's business practices, by proposing administrative obligations intended to minimize or eliminate future occurrences of the issues that led to this Proceeding.

Consumer Protection BC Report

On June 18, 2012, Business Practices and Consumer Protection Authority (Consumer Protection BC) filed an investigative Report with the Commission. After sending the Report to Active Energy for comment, the Commission received an application by Active Energy to expunge the Report. (Confidential Exhibit B-4)

On September 25, 2012, the Commission Compliance Team submitted its view on whether the Report should be expunged (Exhibit A3-1). In that submission the Compliance Team recommended all but pages 1-28 of the Report be expunged because the remainder "is based on a foundational error concerning the role of the investigation report" (Exhibit A3-1, p. 11).

The issue of expungement was to be heard at an Oral Proceeding on October 18, 2012. The Consumer Protection BC Report was also held confidential pending the October 18, 2012 Oral Proceeding. The reasons for holding it confidential were:

"The Commission Panel recognizes that there is a potential that Active Energy could be harmed if the Report is released. There is little prejudice in delaying public disclosure until the determination is made by the Panel. Given that the subject of the Oral Hearing scheduled for October 18, 2012 is whether or not the Report should be expunged, the Commission Panel finds it reasonable to hold the Report confidential until a decision is made on whether the Report is to remain on the record of this Proceeding." (Exhibit A-12, Appendix A to Order A-20-12)

At the October 18, 2012 hearing, Active Energy and the Compliance Team proposed an alternative means of addressing the complaints, namely to develop a settlement agreement. This proposal was accepted by Order A-30-12 and has resulted after some months in this acceptance of a Final Proposed Settlement Agreement. Thus, the issues of the confidentiality and expungement of Consumer Protection Report remain.

The Panel has reviewed the Consumer Protection BC Report and the submissions from the Compliance Team and Active Energy. The Panel agrees with Active Energy and the Compliance Team that the investigation report goes well beyond its proper scope. The Report not only sets forth certain evidence gathered in the investigation, but also contains expressions of opinion about Active Energy's conduct and reaches legal conclusions both of which are properly the domain of the Panel or other authorities. The Panel considered whether it could release certain parts of the Consumer Protection BC Report through redaction of the offensive portions but concludes that it is not possible to do so because the offensive portions are too intermingled with the evidentiary portions. Instead, the Panel reviewed the Proposed Settlement Agreement and the consolidated summaries for the complaints and concludes that all the necessary evidentiary components from the Consumer Protection BC Report have been adequately captured in the Proposed Settlement Agreement. Therefore, the individual complainants will have access to the necessary evidence for adjudication and resolution of the individual complaint affecting them without unfairly and unnecessarily imposing a substantial expectation of harm to the financial and economic interests of Active Energy, which would occur if the Consumer Protection BC Report was made available to the public. The Commission Panel's view is that the Proposed Settlement Agreement provides an adequate evidentiary record for the purposes of the Compliance Inquiry, and for the purposes of this Inquiry, replaces the proper evidentiary record that was contained in the Consumer Protection BC Report. The Commission Panel therefore expunges the Consumer Protection BC Report from the evidentiary record of this Proceeding. Given that the report is expunged, and that the Panel finds that there is a reasonable and substantial expectation of harm to Active Energy if the report is released, the Commission Panel has determined that the Consumer Protection BC Report will not be made available to the public.