



May 24, 2019

Sent via email

**Letter L-19-19**

**Re: Customer Choice Program – Dispute # [REDACTED] (Acct # [REDACTED])/Access Gas Services Inc.**

Dear [REDACTED]:

The British Columbia Utilities Commission (BCUC) acknowledges receipt of your March 12, 2019 application for reconsideration of the February 27, 2019 BCUC determination regarding Dispute # [REDACTED] (Application). The Application requests: a reconsideration of the BCUC determination that there is insufficient evidence to support the customer's claims of misrepresentation by the sales representative; a reversal of the BCUC's finding that the agreement between Access Gas Services Inc. (Access Gas) and the customer is valid and binding; and a refund of the charges the customer incurred after signing the agreement with Access Gas.

An application for reconsideration of a Customer Choice Dispute with the BCUC proceeds in two phases. In the interest of both regulatory efficiency and fairness, the application undergoes an initial screening phase where the applicant must establish a reasonable case to warrant full reconsideration by the BCUC. The BCUC applies the following criteria to determine if a *prima facie* case exists for proceeding with reconsideration:

- Has the BCUC made an error in fact or law?
- Has there been a fundamental change in circumstance or facts since the initial decision?
- Is there new evidence or further information that was not taken into consideration in adjudicating the initial decision?

[REDACTED] submits reasons for the reconsideration request on the following basis:

1. The BCUC's decision dated February 27, 2019 does not address all of the issues the Applicant raised in the complaint;
2. The BCUC did not consider the evidence submitted for violation of Article 14 and 21 of the Code of Conduct for Gas Marketers;
3. The BCUC's decision is based only on the Applicant's responses to the Third Party Verification (TPV) call and does not consider the reasons for his responses to the TPV call; and
4. The BCUC's decision does not state why the evidence submitted by the Applicant was insufficient.

According to the Application:

In my dispute letter emailed to BCUC (and also attached to my dispute submission on FortisBC's Gas Marketers Dispute website), the Commission does not address the following issue: *Lack of*

action by Access Gas on my telephonic and online complaints made pertaining to the misleading marketing tactics by the Sales Rep. I was given the contact details for [REDACTED], Sales Manager at Access Gas to register my complaint. I called him twice and left voice messages on both occasions. I also raised complaint from Access Gas Website <https://accessgas.com/contact-us/>. Along with this application, I am also attaching the dispute letter [REDACTED] Dispute Summary and Rebuttal.pdf' that am referring above. In the dispute letter, please refer Issue #4 on page 1, and Actions #2, #3, #4 on page 2. By not taking action on my complaint, Access Gas is in violation of Article 12 of the Code of Conduct.

According to Access Gas' response to the original dispute, "Access [Gas] contacted [REDACTED] to discuss his dispute and to attempt a mutual resolution. The Access [Gas] CSR [customer service representative] offered to lower [REDACTED]'s fixed price or to cancel his enrollment effective his next anniversary date without further obligation from him. [REDACTED] declined both offers." The customer first contacted the gas marketer with his concerns on December 10, 2018. The gas marketer proposed the above resolution on December 13, 2018. Access Gas' response time is considered reasonable.

According to the Applicant, the sales representative showed the customer a copy of what appeared to be a sample invoice with misleading information regarding the gas marketer's price, left the customer with a pamphlet and instructed the customer to answer "Yes" to every question during the TPV call. The customer raised these same concerns in the initial Application and has presented no evidence or no new evidence to support the allegations that the sales representative used misleading marketing materials.

According to the Application, "The Commission's decision seems to be based only on my responses to the TPV call. It does not factor the reasons I had provided for my responses to the TPV call. Also, the Commission's response does not state why the evidence submitted is insufficient." The evidence submitted by [REDACTED] was adequately addressed in the reasons for decision. It is not necessary that the BCUC address every item of evidence or explain why the evidence was insufficient. However, the reasons, as a whole, are responsive to the issues raised by [REDACTED] and his arguments presented in the initial Application. Moreover, the issues raised in his application for reconsideration were either presented in the original dispute or addressed above. [REDACTED] has not presented any evidence or argument that establishes a *prima facie* case that the BCUC erred in fact or law in its determination of his complaint. Instead, the Application primarily repeats the initial arguments presented by [REDACTED] in the initial application.

However, in the application for reconsideration, [REDACTED] did produce a snippet of his phone call log in which he claims that the TPV call occurred within 24 hours of his signing the agreement contrary to Article 33 of the Code of Conduct. Article 33 states that the TPV call must not occur less than 24 hours and not more than 20 calendar days of the consumer executing the contract. A review of [REDACTED]'s phone call log and the Agreement under the time "Channel ID" indicates the TPV call could have occurred 19 minutes prior to the 24 hour mark. Even if the BCUC accepts [REDACTED]'s evidence that the TPV call did occur 19 minutes prior to the 24 hour mark, contrary to Article 33 of the Code of Conduct, a failure to comply with the Code of Conduct does not alone amount to a BCUC order to rescind or invalidate the customer's agreement as set out in Article 31.

Given these circumstances, the criteria for proceeding with a reconsideration, and therefore a *prima facie* case, have not been met. Specifically, on a *prima facie* basis:

- The BCUC is not persuaded that it has made an error in fact or law;
- The BCUC is not persuaded that there has been a fundamental change in circumstances or facts since the initial decision; and
- Relevant evidence or further information that was not taken into consideration in adjudicating the initial decision has not been presented.

██████'s request for a reconsideration is therefore denied. The BCUC determination made on February 27, 2019 that the Agreement is valid and binding, stands.

Sincerely,

*Original Signed By:*

Patrick Wruck  
Commission Secretary

OK/nd

cc: Ms. Meghan Karrasch  
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