



May 5, 2021

Sent via email

Letter L-11-21



Re: Customer Choice Program – Dispute #39256 [REDACTED] Access Gas Services Inc.

Dear [REDACTED]:

The British Columbia Utilities Commission (BCUC) has received your Customer Choice dispute and has considered the evidence relating to this matter. The BCUC's findings are outlined below.

Nature of the dispute

You (the Customer) filed the dispute on the basis of a misrepresentation of the rate set out in the Natural Gas Agreement (the Agreement).

Evidence and other considerations

The Agreement, dated August 29, 2019, came into effect September 3, 2019. You filed the dispute on January 20, 2021.

According to you, the sales representative who came to your residence told you that the rates are at the lowest in 15 years and you could lock in the rate for five years. Later, however, you determined that the gas rate in the Agreement was not, in fact, the lowest rate in 15 years. You also state that when you contacted Access Gas in January 2021 about the rate, you were told that even if the sales representative had misrepresented the rate, it was your responsibility to have checked the rate.

Access Gas states that it offered you an early exit fee of \$483 due by September 1, 2021 to cancel the Agreement effective the next anniversary date, November 1, 2021, as per the Terms and Conditions of your Agreement.

Access Gas considers the Agreement valid and binding.

During the Third-Party Verification (TPV) call, which was recorded and provided as evidence in the dispute, you indicated at the beginning of the call that you had some questions, which you would ask after the TPV caller (TPV Representative) asked the verification questions. In addition, you confirmed that you:

- Are the FortisBC account holder;
- Have been provided with a copy of the signed Agreement;

- Agreed to a price of no more than \$5.89/GJ for a term of five years;
- Understand that you may or may not save money in the Customer Choice Program; and
- Have the right to cancel without penalty within 10 days.

As the matter has not been resolved directly between you, as the Customer, and the Gas Marketer, the BCUC has reviewed and adjudicated the matter.

BCUC determination

According to you, the sales representative who signed you up for a 5-year gas contract told you that the gas rates were the lowest in 15 years, which you subsequently confirmed was not correct. Therefore, if the sales representative did make this statement, that is a misrepresentation and is inconsistent with Article 15 of the Code of Conduct¹.

In a situation such as this, involving allegations of deceptive acts or practices - misrepresentation - section 5(2) of the *Business Practices Consumer Protection Act*² (Act) places the burden of proof on the supplier to demonstrate that the deceptive act or practice was not committed.

Access Gas states that its records do not show any previous complaints about the sales representative but that "a further investigation cannot be conducted with the sales representative as he is not actively working with Access." Access Gas further states that "even in the case where the sales representative is no longer working with us, Access consistently follows the same dispute investigation process by thoroughly reviewing the written Agreement and Third Party Verification (TPV) recording, along with any correspondence with our Customer Service team."

In this case, however, either the TPV call was not properly recorded (because the recording ends mid-sentence), or else the TPV call was not properly conducted. Whichever is the case, Access Gas has not provided an explanation. Nor is there any explanation of the outcome of the questions that you told the TPV Representative you had.

Access Gas has not adequately investigated the alleged misrepresentation and therefore it has not discharged the burden under section 5(2) of the Act to demonstrate that the deceptive act was not committed.

For these reasons, the BCUC finds the Agreement should be cancelled as of the dispute date.

The Customer will return to FortisBC for his natural gas supply and Access Gas will reimburse you for the difference between Access Gas's fixed natural gas rate and FortisBC's variable natural gas rate for the period since the dispute date. Please note it may take one to three billing cycles for the change to appear on your bill; a credit will be posted at that time.

¹ [Code of Conduct for Gas Marketers, Article 15 p. 10.](#)

² [British Columbia Business Practices and Consumer Protection Act, section 5\(2\).](#)

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

DD/cmv
enclosure

cc: Ms. Megan Sedawie
Unbundling Supervisor
Access Gas Services Inc.
megans@accessgas.com

Mr. Charlie Barrotta
Vice President
Access Gas Services Inc.
charlie.barrotta@accessgas.com

An application for reconsideration of this determination can be made following the guidelines enclosed.



Customer Choice Program

Dispute Reconsideration Guidelines

January 2012

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, British Columbia, Canada V6Z 2N3

Telephone (604) 660-4700; Facsimile (604) 660-1102
B.C. Toll Free: 1-800-663-1385

Internet Email: customer.choice@bcuc.com
Website: <http://www.bcuc.com>

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CUSTOMER CHOICE PROGRAM

Dispute Reconsideration Guidelines

1.0 INTRODUCTION

If a Customer or a Gas Marketer believes the Commission has made an error in the course of making a decision on a dispute, either party may raise the issue for further review by applying to the Commission for reconsideration. The Commission will not reconsider a dispute decision on the basis that the parties are unhappy with the decision. For a reconsideration to proceed, the applicant is required to establish a *prima facie* case (a case that until it is rebutted establishes that an error has been made) that reconsideration is warranted.

The following is an outline of the reconsideration process for the Customer Choice Program. This outline is used by the Commission to determine whether to accept an application for reconsideration and how to proceed with that reconsideration.

2.0 STEPS IN THE DISPUTE RECONSIDERATION PROCESS

2.1 Submit a Dispute

Applications for reconsideration must be received by the Commission in writing within 30 days of the date of the disputed decision. An application for reconsideration must:

- identify the disputed decision to be reconsidered including the dispute number, FortisBC account number and gas marketer's name;
- state the legal or factual grounds upon which the decision should be changed;
- state the applicant's desired outcome;
- contain the name, address and telephone number of the applicant or the applicant's representative; and
- be signed by the applicant or the applicant's representative.

Applications should be addressed to Customer Choice Program and can be submitted via email, mail or fax to:

- Email: customer.choice@bcuc.com
- Fax: (604) 660-1102
- Mail: Sixth Floor - 900 Howe Street, Box 250, Vancouver, BC V6Z 2N3

Once the Commission receives an application it will conduct an initial review to determine whether the application shall proceed.

2.2 The Reconsideration Process

The Commission considers written submissions from the parties involved in a dispute in two phases of the reconsideration process. These two phases are outlined in the sections below.

2.2.1 Phase I – Initial Review

In the interest of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission. The first phase is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be reconsideration by the Commission?
- If there is to be reconsideration, should the Commission allow new evidence?
- If there is to be reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

Following the Commission's review of the application, the Commission issues a notice to the other party involved in the disputed decision requesting them to submit a response to the application for reconsideration by addressing those questions set out in the notice. Upon receipt of the other party's response, the Commission asks the applicant to provide reply comments to the response received from the other party.

After the first phase evidence has been received, the Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

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

In addition, the Commission may exercise its discretion and decide to undertake reconsideration of a decision whenever it deems there is just cause. If the Commission decides that a request for reconsideration should proceed, the application moves on to Phase II of the process. If the Commission decides that reconsideration should not proceed, the Commission will provide all parties with written notice of its decision.

2.2.2 Phase II – Commission Reconsideration

If the Commission decides an application for reconsideration should proceed, the Commission issues a Phase II Reconsideration Notice to the Customer and the Gas Marketer outlining the issues to be reconsidered and whether new evidence is allowed and setting the schedule for submissions. In moving to Phase II of the reconsideration process, the Commission will consider written arguments addressing the substance of the issues approved for reconsideration. When submitting written arguments, the parties must copy each other and must respond on or before the dates set out in the Phase II Reconsideration Notice.

The Commission bases its decision on the application on the submitted arguments.

3.0 ALTERNATIVES TO THE RECONSIDERATION PROCESS

In addition to the Commission's reconsideration process, there are two alternatives available to parties who wish to challenge a Commission decision or the fairness of the process used by the Commission to arrive at the decision:

- File for leave to Appeal the Commission's decision with the Court of Appeal of British Columbia
- File a complaint with the Office of the Ombudsperson of BC

These options are discussed in more detail below.

3.1 File for Leave to Appeal to the Court of Appeal of BC

The *Utilities Commission Act* provides a second alternative for challenging a Commission decision. This alternative is by way of the Court of Appeal of British Columbia. The Court of Appeal will consider only alleged errors of law or jurisdiction.

An application to obtain leave to appeal to the Court of Appeal must be launched within 30 days of the Commission issuing its Decision. Applicants must first obtain the court's leave for the appeal before commencing the actual appeal. The court will sometimes take into consideration as a factor in granting leave whether or not the party applying has exhausted its other remedies. Therefore, the party applying for leave may also want to apply for reconsideration by the Commission at the same time.

If a participant chooses to pursue an appeal, the procedures may be quite complex and formal. Normally, lawyers become involved at this stage, as their knowledge of court procedures and legal arguments tends to be very useful. It is not necessary, however, to hire a lawyer in order to make an appeal to the Court of Appeal.

3.2 The Office of the Ombudsperson of BC

If a customer is not satisfied with the Commission's handling of a complaint, he or she may contact the provincial Ombudsperson's Office to review the process used. The BC Ombudsperson reviews the Commission's processes, including the process for resolving complaints. The BC Ombudsperson can recommend reconsideration of a matter because of an error in procedure, but cannot overturn a Commission decision.