



ORDER NUMBER
A-11-23

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Easy Energy Inc.
Penalty for the Confirmed Contravention of section 71.1(3) of the *Utilities Commission Act*

BEFORE:
M. Jaccard, Commissioner

on December 7, 2023

ORDER

WHEREAS:

- A. By Order A-3-23 and accompanying Reasons for Decision dated September 12, 2023, the British Columbia Utilities Commission (BCUC) determined that Easy Energy Inc. (Easy Energy) contravened section 71.1(3) of the *Utilities Commission Act* (UCA) by failing to comply with Directives 3b, 3c and 3h of the Licence Order A-5-21 (Confirmed Contraventions);
- B. Part 8.1 of the UCA and section 3(3) of the Administrative Penalties Regulation empower the BCUC to impose administrative penalties and set financial limits for contraventions of the UCA;
- C. On October 23, 2023, BCUC staff submitted a report recommending the BCUC impose an administrative penalty of \$5,000 on Easy Energy for the Confirmed Contraventions, based on BCUC staff's assessment of the criteria stipulated under section 109.2(3) of the UCA (Staff Report);
- D. By Order G-290-23 dated October 27, 2023, the BCUC established a regulatory timetable for review of the Confirmed Contraventions for the purposes of penalty determination. The regulatory timetable included an opportunity for Easy Energy to provide a submission and evidence in response to the Staff Report;
- E. By letter dated November 14, 2023, Easy Energy accepted the recommended penalty amount of \$5,000 set out in the Staff Report. Easy Energy brought forth no further evidence and made no further submission with respect to the Confirmed Contraventions or the Staff Report; and
- F. The BCUC has considered all the evidence in this proceeding, the assessment in the Staff Report of the criteria stipulated under section 109.2(3) of the UCA, and Easy Energy's acceptance of the recommended penalty amount of \$5,000 and makes the following determinations.

NOW THEREFORE pursuant to section 109.2 of the UCA, and for the reasons attached as Appendix B to this Order, the BCUC:

1. Issues to Easy Energy the Notice of Penalty attached as Appendix A to this Order for the Confirmed Contravention of section 71.1(3) of the UCA (Notice of Penalty).
2. Orders Easy Energy to make full payment of the penalty amount stipulated in the Notice of Penalty within 30 days of receipt.
3. Directs Easy Energy, in a compliance filing, to provide confirmation of payment of the penalty amount stipulated in the Notice of Penalty within 15 days of making such payment.

DATED at the City of Vancouver, in the Province of British Columbia, this 7th day of December 2023.

BY ORDER

Original signed by:

M. Jaccard
Commissioner

Attachment

NOTICE OF PENALTY
IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Easy Energy Inc.
Notice of Penalty
for the Confirmed Contravention of section 71.1(3) of the *Utilities Commission Act*

Pursuant to sections 109.2, 109.3, and 109.4 within Part 8.1 of the *Utilities Commission Act* (UCA), and for the reasons attached as Appendix B to BCUC Order A-11-23, the British Columbia Utilities Commission (BCUC) hereby notifies Easy Energy Inc. (Easy Energy) that:

The following administrative penalty has been levied against Easy Energy for its contravention of section 71.1(3) of the UCA by failing to comply with Directives 3b, 3c and 3h of the Licence Order A-5-21:

- \$5,000

Easy Energy is ordered to make full payment of the penalty amount stipulated in this Notice of Penalty within 30 days of receipt and the BCUC directs Easy Energy, in a compliance filing, to provide confirmation of payment of this penalty amount within 15 days of making such payment.

Easy Energy may appeal this Notice of Penalty under section 101 of the UCA or apply for a reconsideration in writing under section 99 of the UCA. Any reconsideration application under section 99 of the UCA should be addressed to:

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Easy Energy Inc.
Penalty for the Confirmed Contravention of section 71.1(3) of the *Utilities Commission Act*

REASONS FOR DECISION

1.0 Introduction

By Order A-3-23 and accompanying Reasons for Decision dated September 12, 2023, the British Columbia Utilities Commission (BCUC) determined that Easy Energy Inc. (Easy Energy) contravened section 71.1(3) of the *Utilities Commission Act* (UCA) by failing to comply with Directives 3b, 3c and 3h of the Licence Order A-5-21 (Confirmed Contraventions).

On October 23, 2023, BCUC staff submitted a report recommending the BCUC impose an administrative penalty of \$5,000 on Easy Energy for the Confirmed Contraventions, based on BCUC staff's assessment of the criteria stipulated under section 109.2(3) of the UCA (Staff Report). These reasons for decision summarise the legislative authority, the Staff Report, Easy Energy's submissions and the Panel's determination with respect to imposing an administrative penalty.

2.0 Legislative Framework

Gas Marketers

Section 71.1 (3) of the UCA requires 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.

Easy Energy's Gas Marketer Licence¹ is subject to the following conditions:

...

- b. Easy Energy must comply with the Code of Conduct for Gas Marketers and Rate Schedule 36 of FortisBC Energy Inc.
- c. Easy Energy shall ensure that its employees, salespersons or other representatives of its products and services comply with the standards required of a Gas Marketer as set out in the Code of Conduct for Gas Marketers, and Easy Energy shall be responsible for any non-compliance of its employees, salespersons or other representatives of its products and services.

...

- h. Easy Energy must strictly adhere to the script as outlined in Article 33 of the Code of Conduct for Gas Marketers.

¹ Pursuant to Order A-5-21, issued by the BCUC on October 28, 2021 and effective from November 1, 2021 to October 31, 2022.

Administrative Penalties

Pursuant to section 109.2 (1) of the UCA, if the BCUC finds that a person has contravened a provision of the UCA, the BCUC may impose an administrative penalty on that person in an amount that does not exceed the prescribed limit. Section 109.2(3) of the UCA requires the BCUC to consider 12 factors prior to imposing administrative penalties, as follows:

- a) previous contraventions by, administrative penalties imposed on and orders issued to the following:
 - (i) the person;
 - (ii) if the person is an individual, a corporation for which the individual is or was a director, officer or agent;
 - (iii) if the person is a corporation, an individual who is or was a director, officer or agent of the corporation;
- b) the gravity and magnitude of the contravention;
- c) the extent of the harm to others resulting from the contravention;
- d) whether the contravention was repeated or continuous;
- e) whether the contravention was deliberate;
- f) any economic benefit derived by the person from the contravention;
- g) the person's efforts to prevent and correct the contravention;
- h) the cost of compliance with the provision contravened;
- i) whether the person self-reported the contravention;
- j) the degree and quality of cooperation during the commission's investigation;
- k) any undue hardship that might arise from the amount of the penalty; and
- l) any other matters prescribed by the Lieutenant Governor in Council.

The *Administrative Penalties Regulation* (APR) establishes the maximum amounts for administrative penalties issued under the UCA. Section 3 (3) of the APR provides that:

A person who contravenes section 71 or 71.1 of the Act is liable to an administrative penalty not exceeding \$ 100,000.

3.0 Administrative Penalty Assessment

Background

Easy Energy is a licensed gas marketer (Gas Marketer) located in Surrey, BC, that operates as part of the Natural Gas Customer Choice Marketing Program in BC (Customer Choice). The Customer Choice program enables direct natural gas sales by Gas Marketers to low-volume customers, at fixed rates. For a gas marketer to complete a sale under the Customer Choice program, certain aspects of the customer's enrolment and their agreement must be verified with a representative of the Gas Marketer, which is known as a Third-Party Verification (TPV).²

² Staff Report, p. 2.

On August 8, 2022, a residential customer (Customer) filed a dispute with the BCUC (Dispute). On September 1, 2022, Easy Energy filed with the BCUC evidence pertaining to the Dispute, including a recording of the TPV call. In their review of the TPV call, BCUC staff noted potential non-compliance with the Code of Conduct. BCUC staff accordingly recommended that the BCUC hold a hearing to determine if there was a breach of the Code of Conduct for Gas Marketers (Code of Conduct)³.

Contravention

On April 12, 2023, the BCUC established a public hearing to determine whether Easy Energy was in breach of the Code of Conduct regarding the evidence filed in the Dispute (Contravention Proceeding). On September 12, 2023, by Order A-3-23, the BCUC determined that Easy Energy contravened section 71.1(3) of the UCA, by failing to comply with the conditions on Easy Energy's gas marketer licence set out in Directives 3b, 3c and 3h of Order A-5-21. The BCUC determined that an Easy Energy sales agent (TPV Agent) had specifically failed to adhere to Articles 14, 15 and 33 of the Code of Conduct during a TPV call.⁴

Easy Energy stated that in response to this incident, they have taken steps to ensure that each TPV call is reviewed in full during its secondary review process. Easy Energy also committed to implementing additional training and TPV agent recertification in the future.⁵

Staff Recommendation

BCUC staff reviewed the circumstances of the contravention in light of section 109.2 of the UCA and have recommended that an administrative penalty be imposed as the contravention is serious. TPV calls are a crucial requirement in the process of customer enrolment by gas marketers to confirm that the customer understands the key details, including their rights and obligations, under the agreement.⁶

Staff recommended a penalty of \$5,000 as the contravention is limited to one TPV call, and given the following mitigating factors: Easy Energy cooperated with the investigation; limited the harmful consequences of the contravention by canceling the agreement prior to the start date; tried, to some extent, to prevent the contravention; stated that it has implemented process improvements; and has committed to implementing additional training in response to the contravention.⁷

Panel Determination

The Panel determines, following consideration of the criteria set out in section 109.2(3) of the UCA, that it is appropriate to impose an administrative penalty of \$5,000 on Easy Energy for its contravention of section 71.1(3) of the UCA by failing to comply with Directives 3b, 3c and 3h of Licence Order A-5-21. The penalty amount of \$5,000, which is accepted by Easy Energy, is proportionate to the severity of the contravention and should encourage Easy Energy to better comply with its obligations under the UCA as a gas marketer in the future.

³ Staff Report, p. 2.

⁴ Ibid., p. 2

⁵ Ibid., p. 3.

⁶ Ibid., p. 3.

⁷ Ibid., p. 3.