



British Columbia Utilities Commission

Compliance Inquiries for Customer Choice Program – Summary of Key Findings

August 21, 2008

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Introduction

1. Grant Thornton LLP was engaged by the British Columbia Utilities Commission (“BCUC”) to conduct Compliance Inquiries relative to the ***Rules for Gas Marketers*** and ***Code of Conduct*** (jointly referred to as the “Code”), in accordance with BCUC Orders G-55-08 (Smart Energy BC “Smart”), G-56-08 (Summitt Energy BC “Summitt”) and G-57-08 (Universal Energy Corporation “Universal”).
2. The Review Period for the Compliance Inquiries was from October 1, 2007 to March 31, 2008 and the review was conducted between April 1 and June 30, 2008.
3. The Residential Commodity Unbundling Program (“Customer Choice Program”) has been in place since May 1, 2007 with the first flow date of November 1, 2007. At the time of this report, approximately 85,000 Consumers had signed on with the fifteen licensed gas marketers.
4. The purpose of the Residential Commodity Unbundling Program is to provide residential gas Consumers a choice with respect to the pricing model for their gas consumption. Through this program, BCUC licences, regulates and has the responsibility to review licensed Gas Marketers who offer long-term fixed-rate gas contracts to Consumers. Gas Marketers are required to follow specific rules and a code of conduct in their efforts to market gas to Consumers and need to re-apply for their license on an annual basis.
5. Since the commencement of the program, BCUC has worked with the licensed Gas Marketers to refine the Code and has issued updates to the Code. Gas Marketers are required to adapt their processes to reflect changes in the Code.
6. Smart was incorporated on March 10, 2007 and they were granted a licence to operate as a Gas Marketer, subject to complying with the Code, on April 19, 2007. Smart’s license was renewed on October 11, 2007 for a period up to October 31, 2008. Smart’s offices are located in Burnaby, BC.
7. Summitt was granted a licence to operate as a Gas Marketer, subject to complying with the Code, on April 19, 2007. Summitt’s license was last renewed on October 25th, 2007 for a period up to October 31st, 2008. Summitt’s head office is located in Mississauga, Ontario, and its sales offices in Burnaby, BC.

8. Universal was granted a renewed licence to operate as a Gas Marketer in BC, subject to complying with the Code, on November 1st, 2007 for a period up to October 4th, 2008. Universal's head office is located in Toronto, Ontario and their BC sales office in Burnaby, BC.
9. The following summary of key findings for each of the Gas Marketers reviewed includes only those findings deemed by Grant Thornton LLP to be significant. They represent a subset of the detailed findings of the Compliance Inquiries.

Objectives, Scope and Procedures

10. Grant Thornton LLP was engaged by BCUC to conduct Compliance Inquiries relative to the Code for the period from October 1, 2007 to March 31, 2008 (the “Review Period”) during which time the Code issued by Order G-73-07 was in effect. The Code was subsequently updated March 19, 2008 by Order G-44-08. It is part of BCUC’s mandate to define and oversee compliance with the Code.
11. Article 29 of the Code indicates that compliance with the Code is the responsibility of the Gas Marketer. This compliance includes ensuring that there are appropriate systems, policies, procedures and activities (i.e. controls) in place that are designed and undertaken to ensure compliance with the detailed provisions of the Code. This report does not provide an opinion on the overall appropriateness, sufficiency or completeness of the Gas Marketer’s compliance with the Code, but represents a subset of key findings resulting from certain procedures conducted by Grant Thornton to test the controls in place at the three Gas Marketers during the Review Period.
12. Specific terms used in this report have the same meanings that are defined in the Code. A copy of these definitions is included in the Appendix.
13. Our Compliance Inquiries procedures included, but were not restricted to:
 - a) discussions with BCUC to obtain information on the background to BCUC’s compliance regime for gas marketing and to determine the Articles and elements of the spirit of the Code seen as most critical for the success of the Residential Commodity Unbundling Project;
 - b) obtaining a general understanding of the compliance regime at the Gas Marketers through discussions with their respective management and review of their marketing, training and other materials;
 - c) performing specific tests relative to sections of the Code which pose higher risks to Consumers; and
 - d) performing tests relative to sections of the Code where orders were issued against a Gas Marketer in the past.

14. Our Compliance Inquiries testing covered the following general processes:
 - a) the **promotion** of services to Consumers;
 - b) the **training** of Salespersons for adherence to the Code;
 - c) the **sales contracting** process; and
 - d) the **complaints** handling process and management oversight.
15. We interviewed management responsible for compliance with the Code at the Gas Marketers to obtain an understanding of the policies and procedures in place during the Review Period. The representations made by these individuals were relied upon in completing this engagement.
16. We reviewed and relied upon the following records provided by the Gas Marketers in preparing our report:
 - a) data extraction of customers and relevant dates, correspondence and Third Party Verification (“TPV”) recordings for the Review Period;
 - b) data extraction of Salespersons for the Review Period;
 - c) training plans and materials used in and subsequent to the Review Period;
 - d) contract(s) for outsourced activities impacted by the Code;
 - e) TPV script(s) used in and subsequent to the Review Period;
 - f) customer agreements; and
 - g) a representation letter signed by management for each Gas Marketer.
17. We reviewed and relied upon the following records provided by Terasen Gas (“Terasen”), responsible for midstream commodity services, gas distribution, metering, billing and collections, and the BCUC in preparing our report:
 - a) data extraction of all customers for the Review Period, including billing and related premise addresses;
 - b) correspondence received by BCUC regarding complaints made by residents solicited by the Gas Marketers;
 - c) Orders from BCUC related to each Gas Marketer; and
 - d) documentation received from the Gas Marketers for Salesperson training.

18. We performed the following additional procedures related to the Code for the Review Period for the Gas Marketers:
- a) obtained and analyzed sales data for gaps and exceptions, and compared this data to sales data provided by Terasen;
 - b) obtained and reviewed promotional material, including website, and compared these against the requirements of the Code;
 - c) obtained and reviewed training materials and compared them against the requirements of the Code;
 - d) obtained copies of the Consumer agreements used in the Review Period and compared them to the Code;
 - e) obtained a schedule of all Consumers, including those who terminated their contracts, and for a random sample, verified the available details of their interactions with the Gas Marketer relative to the Code;
 - f) compared contract and Salesperson information, from a random sample, to the detail in the contracts included in the Gas Marketers' computer system; and
 - g) attended the head offices and sales offices of the Gas Marketers and toured the facilities, interviewed key managers and reviewed documentation.

Restrictions and Limitations

19. In conducting our Compliance Inquiries and in preparing this report, we have not performed an audit of the financial records of the Gas Marketers or any other entity. Readers are cautioned that this report may not be appropriate for their purposes.
20. Our report is prepared for BCUC for their use in assessing and reporting the compliance of Gas Marketers with certain sections of the *Rules for Gas Marketers* and *Code of Conduct* for the period October 1, 2007 to March 31, 2008. This report is not to be used for any other purpose and we specifically disclaim any responsibility for losses or damages incurred through use of this report for a purpose other than as described in this paragraph.
21. This report is based on information in our possession as at this date. We reserve the right, but will be under no obligation, to review and/or revise the contents of this report in light of information which becomes known to us after the date of this report.

Summary of Key Findings

Smart Energy

22. The following represents a subset of the findings from our Compliance Inquiry for Smart Energy.
23. During the course of our Compliance Inquiry, the management of Smart responded to our questions, provided us the documentation we requested and were generally co-operative with the inquiry process. After discussing our detailed findings with Smart, management indicated that they would address certain of the issues raised in the report.
24. While not specifically a Code violation, the minimal information systems and processes employed by Smart impaired our ability to adequately assess their compliance with certain Articles of the Code. Furthermore, the current systems exposed Smart to increased risk of Code violations with respect to the following:
 - a) Smart's information systems do not provide a mechanism to differentiate between the various natures of logged customer correspondence. As such, management cannot generate reports from its system specifically for complaints and may not be in a position to determine if it is promptly investigating all complaints in a timely manner as required by Article 13;
 - b) Article 23 of the Code indicates that Gas Marketers have a duty to provide a list of Consumers, among other information, upon request by BCUC. At the time of our Compliance Inquiries, Smart appeared to have an inadequate understanding of their own systems in order to meet this requirement. Our tests found exceptions with the completeness and accuracy of Consumer information we requested from Smart and only after multiple requests and attempts were they able to provide to us what appeared to be a full and correct listing of Consumers;
 - c) Article 25 of the Code requires that the Gas Marketer not disclose Consumer information without their consent. While we are not aware at this time of any actual breaches in Consumer privacy, we do note that Smart lacks certain controls designed to protect Consumer privacy; and
 - d) Smart's information systems lacked an adequate audit trail related to the schedule of training and proof of training received by Salespersons.

25. Based on our understanding of the Code and our observations, our Compliance Inquiry resulted in the identification of some apparent exceptions to or violations of the Code, including:
- a) The Code specifies the contact information required on all marketing and contracting documents; however, Smart's materials did not include all of the required contact information (Article 6);
 - b) Smart's contract does not state that the Consumer can obtain a copy of the Code from Smart as required by the Code (Article 11);
 - c) The website for Smart referred to the terms 'sign-up' and 'enrolment' rather than 'contract' or 'agreement' (Article 26). We also noted other instances where terminology and definitions outlined in the Code were not adhered to on the website (Article 11);
 - d) There are no provisions in the Smart contracts that disputes will be referred to and resolved by arbitration administered by BCUC as required by the Code (Article 13);
 - e) The Code requires the use of the term 'contract' or 'agreement'; however, Smart's sales documents do not clearly indicate either of these terms (Article 26);
 - f) The 10 day cancellation period is not displayed prominently in either the paper or electronic contract (Article 26); and
 - g) We found no exceptions with the TPVs provided to us by Smart from our sample; however, Smart was not able to locate eight of the TPVs selected for sampling (Article 31).

Summitt Energy

26. The following represents a subset of our findings from our Compliance Inquiry for Summitt Energy.
27. During the course of our Compliance Inquiries, the senior management of Summitt were co-operative and for the most part responded promptly to our requests for information. We were provided access to their records and offices as requested.
28. We disclosed our detailed findings to management at Summitt. We note that upon identification of issues and exceptions from our Compliance Inquiry, in a number of instances management at Summitt took immediate remedial action.
29. In general, our perception was that Summitt management was conscious of and concerned with compliance of the Code and there appears to be the intention to develop a strong compliance regime.
30. However, based on our understanding of the Code and our observations our Compliance Inquiry resulted in the identification of some apparent exceptions to or violations of the Code, including:

- a) The Code specifies the contact information which is required on all marketing and contracting documents; however, Summitt's materials did not include all of the required contact information (Article 6);
 - b) The training, promotion (paper and web-based) and sales contracting materials used by Summitt include many different references to historical changes in gas price. The periods and sources for these rate changes differ and increase the likelihood of confusion for Salespersons and Consumers (Articles 9 and 15);
 - c) Wording in the Terms and Conditions of Summitt's contract is inconsistent with the Code by noting that it is at Summitt's discretion to extend its contract to a Consumer that has moved. Also, Summitt's materials note that to cancel the agreement Consumers must use registered mail or fax; however, the Code does not specify this restriction (Article 11);
 - d) There are different ten day cancellation periods referred to in Summitt's website, brochures and contracts, some of which do not conform with the definition specified in the Code (Article 11);
 - e) BCUC Order G-44-08 required all Gas Marketers to title all binding documents as agreements or contracts. Consequently, Summitt renamed its 'Registration Form' as the 'Agreement Form'. However, Summitt utilizes a second document entitled 'Customer Agreement'. The use of the term 'agreement' in the title of two different documents may cause confusion for Consumers (Article 26);
 - f) Of the 30 TPVs sampled, we found eight exceptions (Article 31); and
 - g) The Code requires TPVs to be completed prior to registering the contract with Terasen. We found that during the Review Period, Summitt submitted a substantial number of contracts to Terasen prior to a TPV being conducted. Although Summitt revised its process in March 2008 to abide by the Code, we found a further exception after this date (revised Article 31 and original Order G73-07, page 6).
31. While not a Code violation, we observed that Summitt does not have an audit trail to confirm that Code related training was received by its Salespersons.

Universal Energy

32. The following represents a subset of the findings from our Compliance Inquiry for Universal Energy.
33. During the course of our Compliance Inquiry, the senior management of Universal was co-operative and responded promptly to our requests for information. We were provided with access to their records and offices as requested.

34. We disclosed our detailed findings to management at Universal. We note that upon identification of issues and exceptions from our Compliance Inquiries, in a number of instances management at Universal took immediate remedial action.
35. In general, our perception was that Universal's management was very conscious of and concerned with compliance with the Code. There appears to be a strong compliance regime in place.
36. However, based on our understanding of the Code and our observations, our Compliance Inquiry resulted in the identification of some apparent exceptions to or violations of the Code, including:
- a) Universal's promotional materials note that they guarantee a competitive rate. The Code requires that all guarantees be clearly and succinctly set out as well as any remedial steps for the Consumer; however, Universal does not provide this information in relation to this guarantee (Article 5);
 - b) The Code specifies the contact information required on all marketing and contracting documents; however, Universal's materials did not include all of the required contact information (Article 6);
 - c) The Code states that the Consumer has ten calendar days from the date the enrolment is received by the utility (Terasen) from the Gas Marketer (Universal) to cancel their contract. The various promotional and training materials used by Universal in some instances define different cancellation periods (Article 11);
 - d) Universal's website is designed to allow Consumers to enter into contracts with Universal; however, we found several deficiencies within the website. In addition to wording that is not consistent with the Code, we found that the online contracting process included faults. As a consequence, there may have been inadvertent electronic contracts, although none were identified in our review (Article 12); and
 - e) In the course of testing sales transactions, we identified apparent Code exceptions in three out of the 30 TPVs that we sampled and reviewed (Article 31).

Yours truly,
Grant Thornton LLP



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Appendix - Definitions

Definitions from the Code of Conduct

1. **Act** means the Utilities Commission Act of British Columbia as amended from time to time.
2. **Code** means the Code of Conduct for Gas Marketers.
3. **Commission** means the British Columbia Utilities Commission.
4. **Commodity Unbundling Service** is defined as the series of transactions involving the sale of gas by a Gas Marketer to a Gas utility for resale to a Low Volume Consumer arranged by Gas Marketer at a price agreed to between the Gas Marketer and the Low Volume Consumer.
5. **Consumer** refers to any person or entity to which Gas Marketers direct or may direct their Gas Marketing activities under the Commodity Unbundling Service and includes both Consumers contracted with Gas Marketers or Consumers being supplied by a utility. Consumers include Residential and Commercial as defined by the local utility offering the Commodity Unbundling Service.
6. **Consumer's Agreements** means all written agreements and contracts between a Gas Marketer and a Consumer for the Marketing of Gas, other than the Offer.
7. **Consumer Information** means information relating to a specific Consumer obtained by a Gas Marketer or its Salesperson in the process of selling or offering to sell Gas to the Consumer, and includes information obtained without the consent of the Consumer.
8. **Day(s)** means a calendar day(s) unless otherwise indicated.
9. **End User** is an entity or person who utilizes Gas either as fuel or a raw material.
10. **Gas** means natural gas, substitute natural gas, synthetic gas, manufactured gas, propane-air gas or any mixture of any of them.
11. **Gas Marketer** means an entity licensed by the Commission to engage in Gas Marketing to Low Volume Consumers under the Commodity Unbundling Service.

12. **License** means a license issued under the Act by the Commission for the Marketing of Gas by a Gas Marketer to a Low Volume Consumer.
13. **Licensed** means a person or entity holding a current valid License.
14. **Local Distribution Company (LDC; Utility)** is a person/company enfranchised to distribute Gas within a defined territory.
15. **Low Volume Consumer** – as defined by the Commission pursuant to section 71.1 of the Act. A “low volume Consumer” is defined as a person who, for the applicable period, either:
 - a) has, or is expected to have, a normalized annual consumption at one premise of less than 2,000 gigajoules of Gas per year; or
 - b) has chosen the Commodity Unbundling Service supply option, whatever the person’s annual consumption of Gas.
16. **Marketing** for the purpose of this Code, means any activities intended to solicit a Consumer or potential Consumer to contract with a Gas Marketer, including providing for a Consumer’s consideration an Offer, and is characterized by door-to-door selling, internet, telemarketing, direct mail selling activities, and any other means by which a Gas Marketer or its Salesperson interacts directly with a Gas Consumer or potential Gas Consumer.
17. **Offer** means a proposal to enter into an agreement made to an existing or prospective Consumer for the sale of Gas.
18. **Premise** means the building or portion of a building that is provided with Gas through a single meter.
19. **Regulation** means a regulation made under the Act.
20. **Salesperson** means a person who is employed by or otherwise conducts Marketing on behalf of a licensed Gas Marketer, or makes representations to Consumers on behalf of a Gas Marketer for the purpose of effecting sales of Gas to Low-Volume Consumers.
21. **Third Party** with respect to a Gas Marketer, means a person other than the Gas Marketer, and includes other Gas Marketers, affiliates, Consumers and other persons.
22. **Third Party Verification (TPV)** is a digitally recorded telephone call between the Gas Marketer and the Residential Consumer to confirm with the Residential Consumer an understanding of the Offer, Consumer’s Agreements, Confirmation Letter and Cancellation Rights.