

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rzepka v. FortisBC Energy Inc.*,
2024 BCSC 753

Date: 20240503
Docket: S251836
Registry: New Westminster

Between:

Andrew Erwin Rzepka

Plaintiff

And

FortisBC Energy Inc.

Defendant

Before: The Honourable Madam Justice Sukstorf

Reasons for Judgment

The Plaintiff Appearing in Person:

A. Rzepka

Counsel for the Defendant:

L.C. Morrison

Place and Date of Hearing:

New Westminster, B.C.
April 4, 2024

Place and Date of Judgment:

New Westminster, B.C.
May 3, 2024

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Introduction

[1] This case centers on a dispute over gas service and billing. Mr. Rzepka, the plaintiff and customer, experienced a service disconnection after he refused to pay a bill for gas usage he disputes. FortisBC Energy Inc. (“FortisBC”) is the natural gas utility company responsible for the delivery of the natural gas. Mr. Rzepka alleged that FortisBC incorrectly and fraudulently billed him and that their gas meter (the “Meter”) was not functioning properly and created a hazard at his home.

[2] Mr. Rzepka’s action was originally initiated in Small Claims Court, however, the action was subsequently transferred to the BC Supreme Court when the amount claimed in damages exceeded \$35,000.

[3] Both parties consented to have their dispute resolved through a Summary Trial.

Positions of the Parties

Mr. Rzepka

[4] Mr. Rzepka contended that his gas Meter was fogged up and corroded from December 2021 to May 2022, exposing him to potential harm from leaking gas mixed with water escaping from the faulty Meter. He asserted that FortisBC neglected to promptly address his service request when he reported the issue. Furthermore, he argued that FortisBC persisted in billing him for gas service in violation of the customer agreement. He maintained that FortisBC was duty-bound to furnish him with dependable equipment for safe gas delivery to his residence and ensure transparency in the billing procedures.

[5] Firstly, he argues that FortisBC breached their fiduciary duty to him owed under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 [CBCA].

[6] Next, he relies upon the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 [BPCPA], Part 2 – Unfair Practices, to suggest that the FortisBC practices were deceptive. He also relies upon the *Canada Consumer Product Safety*

Act, S.C. 2010, c. 21 [CCPSA] that prohibits the manufacture, import and sale of products that pose a danger to human health or safety.

[7] He alleged that FortisBC was criminally negligent in the manner upon which they managed his complaint and that they breached their duty of care and fiduciary duty they owed him.

[8] For relief, he seeks all of his out-of-pocket costs as follows:

- a) Convert to electric hot water \$2,700.00;
- b) Convert to electric furnace \$11,000.00;
- c) Upgrade his electric panel from 100 to 200 Amp \$6,000.00;
- d) Convert swimming pool electric heater \$9,000.00;
- e) Conduct Company Search \$52.50;
- f) Filing Fees \$156.00; and
Service Fees \$80.00.

[9] In addition, in the “Relief Sought” section of his notice of civil claim he seeks the following:

Aggravated Damages

Mental anguish harassment by collection agencies - \$100,000.00;

And for months wondering if his home was going to blow up from the defective gas meter delivering gas to his home;

Exemplary (Punitive) Damages - \$ 100,000

FortisBC

[10] FortisBC is seeking a judgment to dismiss Mr. Rzepka’s claim entirely. They assert that there is insufficient evidence to support Mr. Rzepka’s allegations that FortisBC erroneously and fraudulently billed him, or that they created a hazard at his home.

[11] FortisBC argued that they do not owe Mr. Rzepka a fiduciary duty, emphasizing that the relationship between FortisBC and Mr. Rzepka was strictly contractual. Throughout the relevant period, FortisBC maintained compliance with all relevant laws and contractual obligations outlined in the FortisBC Energy Inc.

General Terms and Conditions, effective from November 1, 2018 (the "Terms and Conditions").

[12] They contend that it was Mr. Rzepka who breached the Terms and Conditions by failing to pay his outstanding account as required. Additionally, FortisBC asserts that they only discontinued service to Mr. Rzepka after providing written notice in accordance with the Terms and Conditions.

[13] FortisBC maintains that it has not engaged in any deceptive practices as defined by the *BPCPA*. They refute the assertion that the Meter at Mr. Rzepka's residence was ever in a dangerous condition or posed any unreasonable hazard, as claimed by Mr. Rzepka. Moreover, they argue that even if there were issues, the *CCPSA* does not provide grounds for individual legal action.

[14] Regarding the conversion of Mr. Rzepka's home from gas to electric power, FortisBC asserts that this decision was made independently by Mr. Rzepka and was not a result of any wrongful conduct on their part. Furthermore, they argue that if Mr. Rzepka did suffer any losses, damages, or expenses (which they deny), he failed to take reasonable steps to mitigate these damages. FortisBC highlights that paying the outstanding account and requesting reconnection of natural gas service at a fraction of the cost was a viable option, and they were always willing to facilitate reconnection upon payment of arrears and a reconnection fee.

[15] Additionally, FortisBC contends that neither aggravated nor punitive damages are justified in this case.

Issues

[16] The legal issues requiring assessment in this case are as follows:

- a) Claims against FortisBC practices: Is there any evidence substantiating Mr. Rzepka's claims of erroneous billing or fraudulent practices? If so, do these actions qualify as deceptive practices under the *CCPSA*?

- b) Safety of the Meter: Is there any evidence indicating that the Meter at Mr. Rzepka's residence posed a danger or unreasonable hazard, as asserted by Mr. Rzepka? This inquiry involves determining whether FortisBC fulfilled its duty to ensure the safety of its equipment and whether any hazard existed within the parameters of relevant regulations.
- c) Potential entitlement to compensation: If FortisBC's actions indeed give rise to a cause of action, is Mr. Rzepka entitled to compensation for any incurred losses or expenses? This entails assessing whether Mr. Rzepka suffered damages due to FortisBC's alleged actions, whether he took reasonable steps to mitigate said damages, and whether he qualifies for aggravated or punitive damages.

[17] The above legal issues lie at the heart of the dispute between Mr. Rzepka and FortisBC. Their resolution hinges upon the interpretation of relevant laws, contractual obligations, and the factual evidence presented in the case.

Facts

[16] FortisBC is a company incorporated under the laws of British Columbia, with its headquarters situated in Vancouver, BC. It is engaged in various business activities, including the distribution and supply of natural gas within the Province of British Columbia.

[17] Mr. Rzepka was a residential customer of FortisBC and received gas service from the company at his residence in Surrey, British Columbia.

[18] The terms governing the contractual relationship between FortisBC and Mr. Rzepka are outlined in the Terms and Conditions.

[19] Pursuant to the Terms and Conditions, during Mr. Rzepka's tenure as a customer, his gas consumption was measured by a natural gas meter owned by FortisBC and installed at his residence.

[20] As a customer of FortisBC, Mr. Rzepka received monthly bills for his gas consumption. These bills were based on either actual readings from the Meter or, if FortisBC did not read the Meter, on an estimated amount of gas consumed by Mr. Rzepka.

[21] On December 15, 2021, just before Christmas, Mr. Rzepka observed that his gas Meter was soaked with water and corroded to the extent that the metal casing could be peeled off with a finger, making it impossible to see or read the numbers. He told the Court that he had concern that the condition of the Meter posed a potential hazard to his home and safety.

[22] Mr. Rzepka says he promptly notified FortisBC about the situation and turned off the gas supply, leaving only the pilot light on to alleviate pressure on the gas coming into his home. He told the Court that he was worried about the possibility of serious injuries to himself, his family, their home, or neighboring properties due to the leaking gas mixed with water.

[23] To heat his home during the Christmas holidays, Mr. Rzepka purchased four electric fireplaces and placed them throughout his residence to maintain warmth.

[24] On December 20, 2021, Mr. Rzepka contacted FortisBC and requested an immediate replacement of the Meter due to condensation in the viewing window. However, FortisBC declined the request, stating that condensation in the viewing window of a natural gas meter is a common and harmless occurrence in certain weather conditions.

[25] During the December 20, 2021 telephone call with FortisBC, Mr. Rzepka was advised that they had been able to read Mr. Rzepka's Meter on December 8, 2021 and he was advised that the next reading was scheduled for January 7, 2022. FortisBC representative told Mr. Rzepka that hopefully condensation would have cleared by then, if not, they would estimate. At that time, Mr. Rzepka advised FortisBC that while he is away, access to the Meter will be blocked, but his son will

provide readings and that he did not want FortisBC to come out. He was advised that they will still attempt to read the Meter.

[26] In the first affidavit of Fortis BC Contact Centre Manager Lindsey Goodall, affirmed March 5, 2024, she attests at para. 13 that:

FortisBC personnel did attend Mr. Rzepka's premises in person on the following dates: February 8, 2022, April 6, 2022 & May 4, 2022, to record actual meter reads. During meter readings, visual inspection of meters is performed (sic). If there are any concerns regarding the meter set or possible presence of natural gas odor, it would be noted on the premises account and a FortisBC technician would be dispatched to investigate further. There are no notes or record of any leaks or natural gas odor for Mr. Rzepka's premises.

[27] On December 22, 2021, during the next conversation with a FortisBC representative, Mr. Rzepka informed them that he would be in Mexico for the next few months. Mr. Rzepka explained that his property would be locked up during his absence, limiting access to the Meter. He assured FortisBC that his daughter, Monica, would send him a picture of the Meter reading, which he would then email to them.

[28] In contrast, Mr. Rzepka informed the Court that his property was part of a development where the gates were consistently left open, allowing access for the City of Surrey and other trades.

[29] Upon reviewing all the calls and email complaints made by Mr. Rzepka to FortisBC, it was determined that there were no reports of gas leaks or safety concerns warranting investigation. Instead, Mr. Rzepka's concerns primarily centered on the accuracy of the Meter readings for billing purposes.

[30] On January 12, 2022, as evidenced by a complete email exchange provided in Exhibit B to the second affidavit of Ms. Goodall affirmed March 25, 2024, Mr. Rzepka corresponded with FortisBC regarding his dissatisfaction with the received bill. He asserted that they had not read his Meter and expressed discontent with the increased charges. Mr. Rzepka explained that since they were out of the country on December 28, 2022, FortisBC would not have been able to access his

property. He informed FortisBC that his daughter Monica (providing her telephone number) would photograph the Meter that day to facilitate an adjustment of the bill, considering the actual gas usage in his home with thermostats and water heater set to minimum.

[31] Mr. Rzepka informed the Court that in January 2022, he received a note from FortisBC stating that they were unable to repair his Meter due to a lack of personnel. The actual email response Mr. Rzepka received confirmed that the amount billed was an estimate. The customer service representative's response was as follows:

We were not able to read the meter on January 11 due to not enough manpower. In the event we are unable to read a meter, our system estimates your usage. These estimations are based upon historical usage for the property. There is a possibility that system has incorrectly estimated your gas usage for the month...

We are required to give you a bill each month and again, if we are unable to read, then our system provides an estimation.

As for the rate increases, all increases are approved by the British Columbia Utilities Commission (BCUC), as we are a utility company. The largest increase, which is for the cost of gas, was 0.659\$ per GJ. Since we supply the gas, we have to buy it from suppliers, and the price we pay for gas, is what you, and every other FortisBC customer, pays for gas. We do not mark-up the Cost of Gas.

Once again, once we get a meter reading from someone, we can make adjustments for your following bill.

[32] Shortly thereafter, Mr. Rzepka was advised that the actual reading of the Meter in the picture of January 12, 2022, which was taken by his daughter, shows 5797 which was 8.1 higher than the estimate that was on his bill. He was told the next bill date would be February 4, 2022.

[33] On January 24, 2022, Mr. Rzepka emailed FortisBC once again, expressing his dissatisfaction with the condensation on the exterior casing of his Meter and demanding a replacement. He was informed again that condensation was a common occurrence and that it did not pose a safety hazard, nor did it affect the meter's ability to regulate gas flow into the home.

[34] Mr. Rzepka asserted in court that despite his repeated requests, FortisBC did not attend to his urgent issue throughout January, February, March, April, and May of 2022. Despite this, he received a bill totaling \$1,559.43, alleging that no gas was entering his home except for the pilot light.

[35] On March 7, 2022, Mr. Rzepka lodged a complaint against FortisBC with the British Columbia Utilities Commission ("BCUC"), alleging that the Meter was faulty and that the bills he received were fabricated. In his complaint, he stated, "while we were out of the country most of the winter and the thermostat at zero prompted me to look into this." The BCUC Complaint department summarized Mr. Rzepka's complaint in their response dated October 6, 2022, as follows:

... the meter housing had condensation within the glass making a reading 'impossible'. Further you alleged that your billing was also impacted with increased consumption due to the condensation build up on your meter causing FEI to misinterpret your consumption amount.

[36] In his BCUC complaint, Mr. Rzepka alleged that his invoices were unreasonably high due to inaccuracies in the Meter readings. He claimed that the Meter housing would fill with water during rainy weather, making it impossible to read the consumption numbers accurately.

[37] On March 15, 2022, Mr. Rzepka informed FortisBC that he would withhold payment of his bill until the Meter was replaced. That same day, a technician visited his home to replace the Meter, but nobody was present. The technician left a white tag at the property and requested Mr. Rzepka to contact FortisBC.

[38] On March 23, 2022, Mr. Rzepka's daughter, Monica, provided FortisBC with a meter reading and informed them that her father was out of the country.

[39] On March 21, 2022, an email from FortisBC's customer service to the complaints department at BCUC indicated that FortisBC's team manager, D. Loster, had been in contact with Mr. Rzepka via email to address his concerns. The email stated:

During this interaction it was identified that Mr. Rzepka is currently out of the country and unable to provide access to his natural gas meter. At Mr. Rzepka's request and agreement, Mr. Loster will reach out to him upon his return the first week of April to resolve his concerns.

[40] In April 2022, FortisBC engaged in discussions with Mr. Rzepka and mutually agreed to replace the Meter and initiate a measurement dispute investigation with Measurement Canada. A meter exchange was scheduled for May 5, 2022, with both FortisBC and Measurement Canada present at Mr. Rzepka's residence. Despite this agreement, Mr. Rzepka expressed frustration, insisting that the readings obtained from the Meter were inaccurate due to condensation on the glass, making it impossible for anyone to read the Meter.

[41] On May 5, 2022, FortisBC proceeded to replace the Meter and submitted the old Meter to Measurement Canada for testing and adjudication.

[42] On June 7, 2022, Measurement Canada issued a Certificate of Measurement Dispute Investigation Findings to FortisBC and Mr. Rzepka. The investigation revealed that the Meter was under-registering, meaning it recorded less gas than was actually delivered to Mr. Rzepka's residence.

[43] Prior to its replacement, the old Meter was verified by Measurement Canada to have a reading of 6368. The assessment confirmed that the billed consumption was accurate according to the Meter's reported measurement, while also confirming that the Meter was under-registering consumption. Additionally, on September 15, 2021, Mr. Rzepka provided his own meter reading of 5049 for the September 12, 2021 reading.

[44] On May 9, 2022, FortisBC issued a new bill to Mr. Rzepka, which reflected his Meter reading on May 4, 2022, at the time of removal, and the subsequent reading of the replacement Meter for the remainder of the billing period. It's noteworthy that the reading of the old Meter was 6368, consistent with the measurement confirmed by Measurement Canada.

[45] On June 13, 2022, Mr. Rzepka wrote an email to the Attorney General of British Columbia, outlining the issues he was facing with FortisBC. In the email, he informed the Minister that he and his wife spent some time in Mexico during the winter months, setting their thermostat to zero and leaving only the pilot light on. He expressed frustration at being billed an exorbitant amount by FortisBC when they were unable to read the Meter.

[46] From June 2022 to March 2023, FortisBC continued to bill Mr. Rzepka monthly for his natural gas consumption. While Mr. Rzepka paid the current charges owed each month, he did not settle any of the outstanding arrears from the disputed period spanning January through May 2022.

[47] On June 22, 2022, there is a note in the FortisBC customer service file indicating that Mr. Rzepka was not responding to calls, but his bill was considered high due to the significant gas usage of his appliances and pool.

[48] On October 6, 2022, the BCUC rendered a decision on Mr. Rzepka's complaint ("BCUC Decision"). The BCUC concluded that the consumption for which Mr. Rzepka had been billed was less than his actual consumption, and that FortisBC's actions were consistent with its obligations under the Terms and Conditions and the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 [UCA].

[49] During the time period when Mr. Rzepka was pursuing complaint resolution through various channels, FortisBC placed a hold on any late payment fees to previously billed amounts until the complaint outcome was determined.

[50] Following the BCUC Decision, FortisBC made several phone calls to Mr. Rzepka in an attempt to arrange a payment plan for the outstanding balance. However, Mr. Rzepka consistently refused to pay the outstanding balance or agree to a payment plan.

[51] On February 13, 2023, FortisBC sent Mr. Rzepka written notice by mail informing him that his natural gas service would be disconnected if he did not settle the outstanding balance on his account or agree to a payment plan.

[52] By March 20, 2023, Mr. Rzepka was reminded that failure to pay the outstanding amount could result in a service disruption.

[53] Despite repeated requests, Mr. Rzepka did not make payments for the bills issued by FortisBC for the natural gas he received from January to May 2022.

[54] On April 2, 2023, as the outstanding balance remained unpaid, FortisBC disconnected Mr. Rzepka's natural gas service.

[55] Subsequently, on April 5, 2023, Mr. Rzepka was billed based on a physical reading of his Meter, and the bill for that period remains outstanding.

[56] On May 8, 2023, FortisBC issued another bill to Mr. Rzepka. Since his natural gas service had been disconnected on April 2, 2023, the May 8, 2023 bill included the outstanding balance from April 2023 along with a late payment charge.

[57] Upon reviewing Exhibit A of the second affidavit of Ms. Goodall, which includes the FortisBC Interaction Records concerning Mr. Rzepka's account, the Court observed the following trend of concerns raised on Mr. Rzepka's account:

- a) On March 15, 2019, Auzucena, Mr. Rzepka's wife, called to inquire why their bill was so high despite them being away from January 12 until March 2, 2019. The agent explained that unless she had turned off her appliances, she would still be charged for gas consumption. Due to the cold weather outside and the absence of body heat in the house, more gas was required to maintain the indoor temperature.
- b) On March 17, 2021, FortisBC received an email from Mr. Rzepka regarding his high gas bill. The customer service representative noted that the last three Meter readings were estimates due to a locked gate. The representative advised Mr. Rzepka to input a meter reading via AOL or to provide a picture of the Meter. It was emphasized that an actual reading was necessary for accurate billing based on consumption.

- c) On June 8, 2021, in addressing the Meter reading issue, FortisBC was informed that Mr. Rzepka is out of the country for six months each year. During this period, arrangements would be made for someone to provide access or to send a picture of the Meter around the reading dates.
- d) On July 19, 2021, a customer service representative discussed with Mr. Rzepka his high gas bill from October 2020. It was explained that the October bill served as a catch-up bill because estimates were taken from July to September. The actual reading accurately reflected the gas usage, with the representative noting Mr. Rzepka's tendency toward higher consumption.

Analysis

[58] Firstly, I do not find the *CBCA* applicable in this case. FortisBC is incorporated under the *British Columbia Business Corporations Act*, S.B.C. 2002, c. 57 [*BCA*] and not under the *CBCA*, furthermore, there is no evidence suggesting that the directors of FortisBC breached any of their duties. It is important to note that the duties of directors and officers are owed to the corporation, not to its customers, which was the relationship Mr. Rzepka had with FortisBC.

Issue I: Claims against FortisBC Practices

[59] In analysing the first issue, I began my analysis and assessment of this matter by reviewing the contract or general Terms and Conditions governing the relationship between FortisBC and Mr. Rzepka as a customer. It was not contested in the evidence that the Terms and Conditions governed the delivery of natural gas to Mr. Rzepka's residence. Attached to the first affidavit of Ms. Goodall as Exhibit M are the FortisBC Terms and Conditions.

[60] Section 8.2 of the Terms and Conditions contains the most fundamental and critical provision, requiring Mr. Rzepka to pay for all gas delivered to his residence. It reads:

8.2 Continuing obligation

The customer is responsible for, and must pay for, all Gas delivered to the Premises and is responsible for all damages to and loss of meter sets or

other FortisBC Energy property on the Premises until the Service Agreement is terminated.

[Bold in original.]

[61] In accordance with the Terms and Conditions, the consumption of gas consumed at Mr. Rzepka’s residence was recorded on the Meter owned by FortisBC. Section 16.2 of the Terms and Conditions reads:

16.2 Meter Measurement

FortisBC Energy will measure the quantity of Gas delivered to a Customer using a Meter Set and the starting point for measuring delivered quantities during each billing period will be the finishing point of the preceding billing period.

[Bold in original.]

[62] As a customer, Mr. Rzepka was billed monthly for his natural gas consumption based on either a reading of the Meter or, in the event that FortisBC did not read the Meter, on an estimate of the gas consumed at the residence of Mr. Rzepka. Section 16.4 reads as follows:

16.4 Estimates

For billing purposes, FortisBC Energy may estimate the Customer’s meter reading if, for any reason, FortisBC Energy does not obtain a meter reading.

[Bold in original.]

[63] FortisBC may discontinue service with at least 48 hours written notice if a customer has not fully paid FortisBC’s bill on or before the due date. Section 23.1(a) reads as follows:

23.1 Discontinuance With Notice and Refusal With Notice

FortisBC Energy may discontinue Service to a Customer with at least 48 Hours written notice to the Customer or Customer’s premises, or may refuse Service for any of the following reasons:

- a) The Customer has not fully paid FortisBC Energy’s bill with respect to Services on or before the due date;

[Bold in original.]

[64] Regarding the natural gas supplied to Mr. Rzepka’s residence, it was reported that Mr. Rzepka himself recorded the reading on the Meter on September 15, 2021,

which showed 5049. It is noted that the reading on December 8, 2021, was 5462, recorded from the Meter by physical inspection before any concerns arose regarding condensation in the meter casing.

[65] The meter reading estimated for January 2022 was 5728. Subsequent readings in 2022, whether actual or estimated, were as follows: February: 5947; March: 6139; April: 6205; May 4: 6368. Except for May 2022, all readings indicate lower gas usage than the previous year, which is consistent with Mr. Rzepka's claim that he made efforts to reduce gas usage and that the Meter was underreporting gas delivery. However, it is important to note that the final meter reading confirmed by Measurement Canada when the Meter was replaced was 6368, indicating that the Meter was "under registering consumption." If the final May 2022 bill accurately reflected the final gas consumption reading, then the total billed amount between January and May 2022 would be accurate. The last reading in December 2021 had been read in person and that would mark the starting point for the bill issued in January 2022.

[66] The evidence consistently shows that Mr. Rzepka was exclusively concerned with the cost of natural gas and ensuring that he was not overpaying. As early as 2019, calls were made by either him or his wife expressing concerns about the gas costs while they were away for the winter. They were informed that even if their heating was turned off, gas consumption would still occur if appliances were left operating on gas.

[67] Mr. Rzepka's reaction to the gas bill seemed to be influenced by online reports suggesting that FortisBC was inaccurately recording and billing gas consumption. However, I declined to consider these anecdotes.

[68] Mr. Rzepka, an eighty-plus retired senior, took active steps to reduce his gas consumption while traveling to Mexico for the winter. In reviewing all of his complaints to FortisBC, both in telephone calls and emails, there is no evidence to suggest that he ever believed the condensation on the Meter casing posed any harm, nor is there evidence that he believed it posed a risk at the time he noticed it.

However, I do sympathize with him realizing that despite the steps he took, his gas bill remained high, which was a circumstance beyond his control.

[69] Upon reviewing the multiple gas bills, it is crucial to note that the residential gas rate comprises both commodity and delivery charges. Additionally, there are several basic account charges. However, in the January 2022 bill, there is a note indicating a change in gas prices, which is reflected in both the basic delivery charges and the commodity charges. These changes are significant when considered across the entire bill for a customer on a fixed pension who actively took steps to reduce natural gas usage to lower costs. Prior to January 1, 2022, the cost for basic delivery was \$5.024 per GJ, whereas after January 1, 2022, it increased to \$5.526 per GJ. For instance, for the basic delivery alone of 30 GJ of natural gas, the cost would have been \$150.72 before January 1, 2022, compared to \$165.78 after January 1, 2022.

[70] Regarding commodity charges, there are two factors involved: storage and transport costs, as well as the cost of gas itself. Although the rate for storage and transport slightly decreased, the cost of gas increased. The changes are summarized as follows for the example of 30 GJ:

Prior to January 1, 2022	
Storage and Transport (30 GJ at 1.397 per GJ)	41.91
Cost of gas (30 GJ at 3.844 per GJ)	<u>115.32</u>
TOTAL	\$157.23
After January 1, 2022	
Storage and Transport (30 at 1.351)	40.53
Cost of Gas (30 at 4.503)	135.09
TOTAL	\$175.62

[71] Although there are no indications of a change in the carbon tax, it is noteworthy that it also constitutes a significant cost factored into the bill, and it likely would have increased on January 1, 2022.

[72] An email exchange on January 12-13, 2022, reveals that upon receiving the January 2022 bill, Mr. Rzepka expressed frustration and among other complaints, he questioned the aforementioned increase in fees. The FortisBC customer service representative clarified to Mr. Rzepka that all fee increases have to be approved by the BCUC, as FortisBC is a utility company. He explained that the largest increase in the bill was due to the cost of gas, which they have to purchase from suppliers, and the price they pay for gas is what every FortisBC customer must pay, as they do not mark up the cost of gas.

[73] I found that Mr. Rzepka took all possible measures to reduce his overall gas consumption and charges. However, with the increase in costs and the necessity of some gas usage to maintain certain appliances and keep the pilot light going during cold months, some gas consumption was inevitable. While Mr. Rzepka may have had concerns regarding the Meter readings that were estimated or obscured due to condensation, there is no evidence before me that the final reading done on May 4, 2022, and confirmed by Measurements Canada, had any error other than being lower than the actual consumption. Subtracting that final reading from the December reading reflects the true gas consumption for that entire period.

[74] While empathy is extended to Mr. Rzepka's situation, it is not found that FortisBC engaged in anything deceitful or improper, nor does it amount to any cause of action as pleaded. They simply enforced the Terms and Conditions of the contract they had with Mr. Rzepka as a customer. As discussed earlier, Mr. Rzepka addressed his complaints to the BCUC, which reviewed whether FortisBC followed its approved Tariff and the *UCA*. The BCUC, an independent regulatory agency of the Provincial Government operating under and administering the *UCA*, after a thorough review of Mr. Rzepka's complaints, found that FortisBC's actions were consistent with its duties and responsibilities as outlined in its Terms and Conditions and the *UCA* and closed his file.

[75] In summary, I find no evidence of any deceptive acts or practices as defined by the *BPCPA*.

Issue II: Safety of the Meter

[76] Upon reviewing all the evidence, I find no indication of any health or safety concerns ever reported to FortisBC by Mr. Rzepka or presented in court. The evidence suggests that the Meter was functioning properly and was not deemed unsafe, despite its under-recording of gas delivery, which favored Mr. Rzepka. There were no reports of gas leaks from Mr. Rzepka to FortisBC, nor were any similar concerns noted during meter readings. If such issues were ever reported or observed during an inspection, FortisBC attested that their normal practice would be to respond promptly by dispatching a technician for investigation. Furthermore, despite repeated inquiries by the Court, Mr. Rzepka failed to provide any evidence supporting his concerns regarding the condensation inside the Meter casing as posing a danger to himself or others. His assertions lacked evidentiary support.

[77] As there is no evidence of any actual harm, risk of harm, or reported concerns regarding the Meter's safe operation or any gas leaks, there is no need to assess the situation under the *CCPSA*. Similarly, there is no evidence of negligence on the part of FortisBC.

[78] In light of my findings on the first two issues, there is no need to address the final issue regarding potential compensation.

Conclusion

[79] For the reasons set out above, Mr. Rzepka's claim is hereby dismissed in its entirety.

[80] FortisBC has succeeded in their application, and they have requested special costs. After reviewing the case, I do not find special costs to be warranted, but they are entitled to their costs of this application at Scale B.

“Sukstorf J.”