

**CODE OF CONDUCT
FOR GAS MARKETERS**

**Rule Made under Part 6 of
the *Gas Distribution Act*, 1999**

Board of Commissioners of Public Utilities - New Brunswick

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1.0 INTRODUCTION

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1.1 Definitions

In this Code, unless the context otherwise requires:

“**Act**” means the *Gas Distribution Act*, 1999 as amended from time to time;

“**agency agreement**” means a contract or arrangement under which a consumer retains, as the consumer’s agent, a person who carries on the business of, or engages in, gas purchases, and “**agency**” has a corresponding meaning;

“**agent**” means a representative who is considered in law to represent another party in such a way as to be able to bind that party legally;

“**Board**” means the Board of Commissioners of Public Utilities constituted under the *Public Utilities Act*;

“**broker**” means an individual acting as an independent middleman who obtains authority to obtain and/or seek goods or services. Acting within the scope of his authority, he binds the party who has employed him. He normally does not become a party to the contract and accordingly cannot sue or be sued on the contract, provided he has fully advised and fully disclosed all information to his clients.

“**certificate**” means a gas marketer’s certificate issued under the Act and “**certified**” has a corresponding meaning;

“**Code**” means this Code of Conduct for Gas Marketers;

“**consumer**” means a person who consumes no more than 400 giga joules of gas per year;

“**consumer information**” means information relating to a specific consumer obtained by a gas marketer or its salesperson from a gas distributor in the process of selling or offering to sell gas to the consumer, and includes information obtained without the consent of the consumer;

“**day**” means a calendar day;

“**gas**” means any hydrocarbon or mixture of hydrocarbons that, at a temperature of 15 degrees Celsius and an absolute pressure of 101.325 kilopascals, is in a gaseous state;

“**gas distributor**” means a person owning, operating, managing or controlling a gas distribution system and who has been granted a general franchise or a local gas producer franchise under the Act to distribute gas to customers in the Province;

“**gas marketer**” means a person who holds a certificate issued by the Board under Section 61 of the Act and who;

(a) sells or offers to sell gas to a consumer; or

(b) acts as the agent or broker for a seller of gas to a consumer; or

(c) acts or offers to act as the agent or broker of a consumer in the purchase of gas; and “**gas marketing**” has a corresponding meaning;

“**in writing**” includes written communication, facsimile or electronic communication, or any other similar means of communication considered legally binding in the Province of New Brunswick, and “**written**” has a corresponding meaning;

“**marketing**” for the purpose of this Code, means to provide for a consumer’s consideration an offer, and is characterized by door-to-door selling, telemarketing, direct mail selling activities, and any other means by which a gas marketer or its salesperson interacts directly with a consumer;

“**offer**” means a proposal to enter into a contract, agency agreement, or any other agreement or combination thereof, made to an existing or prospective consumer for the sale of gas;

“**premises**” means the building or portion of a building that is provided with gas through a single meter;

“**regulation**” means a regulation made under the Act;

“**salesperson**” means a person who is employed by or otherwise conducts marketing on behalf of a gas marketer, or makes representations to consumers on behalf of a gas marketer for the purpose of effecting sales of gas or entering into agency agreements with consumers; and

“**third party**” means, with respect to a gas marketer, a person other than the gas marketer, and includes other gas marketers, consumers and other persons.

1.2 Interpretation of the Code

Unless otherwise defined in this Code, words and phrases shall have the meaning ascribed to them in the Act. Nothing in this Code shall alter or affect the conditions in a

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certificate of a gas marketer. In the case of conflict between the conditions in a certificate and this Code, the conditions in the certificate shall prevail. Headings are for convenience only and shall not affect the interpretation of this Code. Words importing the singular include the plural, and *vice versa*, and words importing gender include the masculine, feminine and neuter genders.

1.3 Purpose of the Code

This Code sets the minimum standards under which a gas marketer may sell or offer to sell gas to a consumer, or act as agent or broker with respect to the sale or offering for sale of gas. The Board may exempt a gas marketer from compliance with this Code, in whole or in part, subject to such conditions or restrictions as the Board may determine. From time to time, amendments may be made to this Code by the Board in accordance with the Act.

1.4 Coming into Force

This Code came into force on March 28, 2000 and as amended from time to time.

2.0 STANDARDS AND PRINCIPLES

2.1 Fair Marketing Practices

2.1.1 Nothing in or done under the authority of this Code affects the obligation of a gas marketer and its salespersons to comply with legislation and regulations pertaining to marketing, advertising and business practices, including the *Consumer Product Warranty and Liability Act*, the *Cost of Credit Disclosure Act*, the *Direct Sellers Act* and the *Competition Act* (Canada).

2.1.2 A gas marketer shall ensure that its salespersons adhere to the same standards required of the gas marketer as set out in this Code.

2.1.3 A gas marketer shall do the following when marketing or making an offer to a consumer:

- (a) immediately and truthfully identify itself to the consumer;
- (b) clearly indicate that the offer is not being made by a gas distributor, and not seek to mislead or otherwise create any confusion in the mind of a consumer about the identity of the gas marketer, or about the trademarks of the gas distributor or of competitors;
- (c) not exert undue pressure on a consumer;
- (d) provide sufficient time for a consumer to read thoughtfully and without harassment all documents provided;
- (e) not make any representation or statement or give any answer or take any measure that is false or is likely to mislead a consumer with regard to any term in an offer;
- (f) provide only timely, accurate, verifiable and truthful comparisons;
- (g) not make any verbal representations regarding contracts, rights or obligations unless those representations are contained in the written offer;
- (h) ensure all descriptions and promises made in promotional material are in accordance with actual conditions, situations and circumstances; and
- (i) not use print that, due to its size or other visual characteristics, is likely to impair materially the legibility or clarity of documents provided to consumers.

2.1.4 A gas marketer shall not request a gas distributor to distribute gas to a consumer unless the gas marketer has the permission of that consumer in writing to do so.

2.1.5 Where a gas marketer's marketing or advertising contains representations concerning the nature, quality and price of any gas distributor's service, the gas

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marketer shall take such steps as are reasonable and appropriate to ensure that such representations are accurate and fair.

2.2 Identification

2.2.1 A gas marketer shall, when marketing, use the name under which the gas marketer holds its certificate, and any reference to the name of a salesperson in any advertisement shall identify the gas marketer for whom that salesperson acts.

2.2.2 A gas marketer shall provide the following information when marketing at a place other than the gas marketer's place of business:

(a) name in which the gas marketer holds its certificate;

(b) telephone number of the gas marketer ;

(b) name of the salesperson; and

(c) photograph of the salesperson, if marketing door-to-door.

2.2.3 A gas marketer shall have a mailing address in New Brunswick.

2.3 Information to be Maintained by a Gas Marketer

2.3.1 A gas marketer shall maintain a list of salespersons who act for that gas marketer, and this list shall be provided to the Board upon request.

2.3.2 A gas marketer shall maintain on file:

- (a) a list of its consumers;
- (b) the complete contract with each consumer, in writing, to purchase gas from the gas marketer or for the gas marketer to purchase gas as agent for the consumer, including permission from the consumer to request a gas distributor to distribute gas to the consumer.

2.4 Confidentiality of Consumer Information

2.4.1 A gas marketer shall not disclose consumer information to a third party without the consent of the consumer in writing, except where consumer information is required to be disclosed:

- (a) for billing or market operation purposes;
- (b) for law enforcement purposes;
- (c) for the purpose of complying with a legal requirement; or
- (d) for the processing of past due accounts of the consumer which have been passed to a debt collection agency.

Nothing in this section 2.4 shall prevent a gas marketer from entering into a joint marketing arrangement with a third party for the purpose of selling complementary goods or services to consumers, provided that the gas marketer shall obtain in writing an undertaking from the co-marketer to keep confidential all consumer information it receives as a result of its relationship with the gas marketer.

2.4.2 Consumer information may be disclosed where the information has been sufficiently aggregated such that an individual's consumer information cannot reasonably be identified.

2.4.3 A gas marketer shall not use consumer information obtained for one purpose for any unrelated purpose without the consent of the consumer in writing.

2.5 Conditions in Offers

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2.5.1 Gas marketers are required to provide offers to customers.

2.5.2 An offer shall clearly state the price of gas per giga joule, the terms of payment, the time period for which the contract is in effect, the delivery point, any terms and conditions for renewal, the intended start date for the contract and conditions under which the start date may not be met, and information about the consumer complaint resolution process.

2.5.3 An offer to a consumer shall indicate whether it relates to specified premises for the time being owned, occupied or controlled by the consumer.

2.6 Contracts

2.6.1 A gas marketer shall not enter into any contract with a consumer that is inconsistent with the offer made to the consumer leading to the contract and the contract shall contain the price of gas per giga joule.

2.6.2 A gas marketer shall not enter into any contract with a consumer that has a term of more than five years.

2.6.3 Every contract which a gas marketer enters into with a consumer shall include a condition that allows the consumer to rescind the contract by giving notice within 10 days after it is entered into without the consumer being liable for any damages in respect of the rescission:

(a) by personally delivering or mailing by registered mail a written notice of rescission to a person and address specified in the contract; or

(b) by sending a telephone transmission of a facsimile of a written notice of rescission to a person and a telephone number specified in the contract.

2.6.4 A gas marketer shall advise a consumer of the provisions of section 2.6.3 and provide the consumer with a telephone number for receiving facsimile transmissions both upon entering into a contract with the consumer and if the consumer provides verbal notice of a wish to rescind the contract.

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- 2.6.5 A gas marketer shall provide a consumer with a copy of the contract and any agency agreement at the time the contract or agreement is entered into.
- 2.6.6 A gas marketer shall not enter into any contract as the agent of a consumer within 10 days after being appointed as the consumer's agent.
- 2.6.7 When a contract is expiring, a gas marketer shall notify the consumer in writing of such fact not less than 60 days before the contract's expiration.

2.7 Contract Renewals

- 2.7.1 A gas marketer shall not renew a contract with a consumer unless the original contract contains a right of renewal, and the consumer:
 - (a) receives an advance written notice of the renewal and its terms no more than 120 days before the date of renewal; and
 - (b) has at least 30 days from the receipt of such notice and prior to the date of renewal to cancel the renewal.
- 2.7.2 A contract with a consumer that is renewed shall be consistent with the terms of renewal contained in the original contract, unless the consumer gives permission in writing to implement new terms.
- 2.7.3 Notwithstanding subsection 2.7.2, a gas marketer is not required to obtain a consumer's permission in writing, if the terms of renewal are limited to extending the contract for a period of one year or less. If a contract is renewed for a period of one year or less, a change in price may also be made without a consumer's permission in writing, provided that the consumer is informed of the change in the advance written notice of the renewal and is provided with the opportunity to cancel the renewed contract within 30 days after receiving the first invoice showing the new price.
- 2.7.4 A gas marketer that decides to leave the market and not to renew contracts must notify its customers within two weeks of that decision. The notice shall confirm that the marketer will fulfill its obligations to supply gas for the full term of the contract. The notice shall also state the names and contact information of all gas suppliers that a customer may contact to arrange for gas supply, after the end of their current contract. Marketers are still required to send an expiry notice in accordance with Section 2.6.7.

2.8 Assignment, Sale or Transfer of Contracts

2.8.1 A gas marketer shall not assign, sell or otherwise transfer a contract to another person who does not hold a certificate.

2.8.2 Within 30 days of any assignment, sale or transfer of a contract to another gas marketer, the affected consumer must be notified of the new gas marketer's address for service and telephone number, and of the consumer complaint resolution process, if these have changed.

2.9 Consumer Complaint Resolution Process

2.9.1 A gas marketer is required to attempt to resolve all consumer complaints and inquiries before referring a consumer complaint or inquiry to the Board.

2.10 Breach of the Code

2.10.1 Under Part 5 of the Act, a gas marketer's certificate can be suspended or revoked if the certificate holder does not comply with this Code, as issued and amended by the Board from time to time under Part 6 of the Act.

2.10.2 A breach of this Code may occur in the course of inducing a person to enter into an offer, even in the absence of a contract.