

**CODE OF CONDUCT  
FOR DIRECT PURCHASE TRANSACTIONS**

**PURPOSE**

This Code of Conduct ("Code") sets the minimum standards under which a natural gas marketer may sell or offer to sell natural gas to a consumer, or act as agent or broker with respect to the sale or offering for sale of natural gas to a consumer.

**SCOPE**

The purpose of this Code is to foster and uphold a sense of responsibility towards the consumer and towards the general public by all those engaged in marketing of gas to gas customers in the Province of Manitoba.

The Code applies to all practices used in the marketing of gas for both residential and commercial consumers. Where the practices are different between small volume and large volume consumers, it is noted.

The Code is to be applied in spirit as well as to the letter, bearing in mind the varying degrees of knowledge, experience, and discriminatory ability of consumers.

**1. DEFINITIONS**

In this Code, unless the context otherwise requires:

**"Act"** means *The Public Utilities Board Act*, C.C.S.M., c P280, as amended;

**"Contract"** means a legally binding agreement between the consumer and a marketer for the sale of natural gas at a fixed price for a fixed period of time;

**"Board"** means the Public Utilities Board of Manitoba;

**"Broker"** means a marketer;

**"Confirmation letter"** means a letter sent from the distributor to the consumer. The confirmation letter is sent on notification from the marketer to the distributor that the consumer has entered into a contract with the marketer for the supply of natural gas;

**"Consumer"** means a person who uses natural gas;

**"Consumer information"** means information relating to a specific consumer, which is obtained by a marketer or its salesperson from the customer, a distributor or any other source in the process of selling or offering to sell gas to the consumer, and includes information obtained without the consent of the consumer;

**"Customer"** means a person who purchases gas from a marketer;

**"Day"** means a business day, not including weekends or statutory holidays;

**"Direct purchase"** means the purchase of natural gas by a consumer from supplier(s) other than a distributor;

**"Distributor"** means a person who owns or operates a distribution system for the purpose of delivering gas to consumers;

**"Electronic"** means communication created, recorded, transmitted, or stored in digital form or in other intangible form by electronic, magnetic, or optical means or by any other means that has capabilities for creation, recording, transmission, or storage similar to those means. Electronic communication is primarily conducted over the internet;

**"Large volume consumer"** means a consumer that is not in the Small General Service (SGS) rate class;

**"Marketer"** means a person who is registered to sell gas under Section 114 of the Act and,

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

**"Marketing"** for the purpose of this Code, means any activities intended to solicit a consumer or potential consumer to contract with a 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 marketer or its salesperson interacts directly with a gas consumer or potential gas consumer;

**"Offer"** means a proposal to enter into a contract, made to an existing or prospective customer for the sale of natural gas;

**"Premise"** means the building or portion of a building that is provided with gas through a single metre;

**"Price"** means a determined amount of money on a ¢/cubic metre basis of natural gas, plus any fees or charges to be paid by the consumer for the benefit of the marketer;

**"Salesperson"** means a person who is employed by or otherwise conducts marketing on behalf of a marketer, or makes representations to consumers on behalf of a marketer for the purpose of effecting sales of gas or entering into contracts with consumers;

**"Small volume consumer"** means a consumer in the Small General Service (SGS) rate class;

**"Telemarketing"** is marketing and selling conducted by the marketer using the telephone, and may be initiated by the consumer or the marketer;

**"Third party"** with respect to a marketer, means a person other than the marketer, and includes other marketers, affiliates, consumers and other persons;

**"Verbal"** means communication between the consumer and the marketer over the telephone that is recorded by the marketer. The communication may be initiated by either the consumer or the marketer; and

**"Written"** means communication through writing, facsimile, or any other means of written communication considered legally binding in the Province of Manitoba.

## **2. APPLICATION and AMENDMENT**

- 2.1 Any marketer who offers a contract to a consumer must be licensed and registered to do business in the Province of Manitoba and be licensed as a marketer with the Board pursuant to s.114 of the Act.
- 2.2 The Board may on its own motion or on application by others, amend this Code from time to time.

## **3. FAIR MARKETING PRACTICES**

- 3.1 A marketer shall ensure that its salespersons adhere to the same standards required of the marketer as set out in this Code.
- 3.2 A marketer shall ensure that its agents do the following when marketing or offering a contract to a consumer:
  - (a) immediately and truthfully identify themselves to the consumer;
  - (b) immediately provide a business card to the consumer, where applicable;
  - (c) specifically state that the offer is not being made by the distributor and state that distributor's name;

- (d) not seek to mislead or otherwise create any confusion in the mind of a consumer about the identity of the marketer or its salesperson, or about the trademarks of the regulated distributor or of competitors;
- (e) not seek to mislead or otherwise create any confusion in the mind of a consumer about links to the distributor or a government agency;
- (f) not exert undue pressure on a consumer;
- (g) provide sufficient time for a consumer to read thoughtfully and without harassment all documents provided prior to the customer signing;
- (h) 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;
- (i) provide only timely, accurate, verifiable, and truthful comparisons;
- (j) not make any verbal representations regarding contracts, rights, or obligations unless those representations are contained in the written or electronic contract;
- (k) ensure all descriptions and promises made in promotional material are in accordance with actual conditions, situations and circumstances;
- (l) not use print that due to its size or other visual characteristics is likely to impair the legibility or clarity of documents provided to consumers;
- (m) not exploit the age or knowledge of the English language of the consumer.

- 3.3 Where a marketer's advertising or marketing materials contain representations concerning the nature, quality and price of any distributor's or supplier's service, the economy, or the market price of natural gas the marketer shall take such steps as are reasonable and appropriate to ensure that such representations are timely, accurate, verifiable and truthful.
- 3.4 A contract for small volume consumers shall clearly indicate the time period for which the contract is in effect, and any terms and conditions for renewal. A contract shall also clearly state:
- the price in ¢/cubic metre;
  - terms of payment, including frequency and to whom payment will be made if applicable;
  - the start date of the contract;
  - how to make a complaint to or enquiry of the gas marketer;
  - that the customer is entitled to receive a copy of this Code from the marketer;
  - how to access the customer complaints resolution process described in Section 9 of this Code;
  - cancellation rights of the customer, including the 10 day cancellation period;
  - reasons for which the contract may be terminated;
  - whether the contract can be transferred or assigned to another marketer; and
  - premises to which the contract applies.

Where a contract contains any of the following material terms they must be stated clearly:

- deposits required by marketer, if applicable;
  - exit fees payable to the marketer, if applicable;
  - late charges, if applicable;
  - the nature and amount of any other charges payable to the marketer related to the contract, if applicable; and
  - the type and frequency of bills the customer will receive, if applicable.
- 3.5 A marketer shall provide the consumer with a copy of the contract at the time the contract or agreement is entered into for door-to-door sales and by mail for telephone sales. Customers entering into a contract by way of the internet must be provided with the facility to print their contract.

Clauses 3.6 through 3.12 apply only to small volume consumers:

- 3.6 Any contract used by a marketer shall clearly indicate on the front page the price in ¢/ cubic metre together with any other fees payable to the marketer and the duration of the contract.
- 3.7 A marketer shall file with the Board its form of contract and any amendments thereto.
- 3.8 A contract with a consumer shall indicate whether it is being made with respect to specified premises for the time being owned, occupied, or controlled by the consumer.

- 3.9 A marketer must retain evidence of the permission, either verbal, electronic, or written, of the customer authorizing the marketer to supply gas to a consumer.
- 3.10 A marketer shall not enter into any contract with a consumer that is inconsistent with the offer made to the consumer leading to the contract.
- 3.11 A marketer shall not provide any form of direct monetary incentive to a consumer to entice them to enter into a contract. The Board shall use its discretion to determine what constitutes a direct monetary incentive.
- 3.12 A marketer's price shall remain fixed for each 12-month period of the contract. Seasonal pricing variation will not be allowed.

#### **4. IDENTIFICATION**

This section applies only to small volume consumers.

- 4.1 A marketer shall, when marketing, use the name under which it is registered, and any reference to the name of a salesperson in any advertisement shall identify the marketer for whom that salesperson acts.
- 4.2 A marketer shall provide the following information in a business card when marketing at a place other than its business premises:
  - name in which the marketer is registered;
  - a Manitoba or toll-free telephone number, civic address, and email address of the marketer that may be used by the general public to contact the marketer; and
  - name of the salesperson.
- 4.3 The salesperson shall be wearing an ID badge with a photograph of the salesperson, if marketing door-to-door.

## **5. INFORMATION TO BE MAINTAINED BY A NATURAL GAS MARKETER**

This section applies only to small volume consumers.

5.1 A marketer shall maintain on file:

- (a) a list of salespersons and the dates of their employment;
- (b) a list of its customers;
- (c) permission from each consumer, either verbal, written, or electronic, to submit a request to a distributor to allow the marketer to supply gas or arrange the gas supply to the consumer;
- (d) permission from each consumer, either verbal, written, or electronic, to purchase gas from the marketer or for the marketer to purchase gas as agent for the consumer;
- (e) a copy of the complete contract which the marketer has with each consumer; and
- (f) a complete recording of the telephone call between the consumer and the marketer if the consumer entered into a contract over the phone;

and shall provide such information to the Board upon request.

5.2 The information required by sub-sections 5.1 (c), (d) and (e) may be contained on a single document or in a single digital record.

## **6. CUSTOMER INFORMATION**

6.1 A marketer shall not disclose customer information to a third party without the consent of the customer in

writing, except where customer information is required to be disclosed for the following purposes:

- (a) for billing or gas supply management 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.
- 6.2 Customer information may be disclosed where the information has been sufficiently aggregated such that an individual's customer information cannot reasonably be identified.
- 6.3 A marketer shall inform customers that customer information may be released to a third party without the customer's consent for the purposes of billing, gas supply management, law enforcement, compliance with a legal requirement or the processing of past due accounts of the consumer which have been passed to a debt collection agency.

## **7. CONTRACTS**

This section applies only to small volume consumers.

- 7.1 Every contract which a marketer enters into with a customer shall include a condition that allows the customer to unconditionally cancel the contract by giving notice by phone, registered mail or email (with a copy to the Board at [publicutilities@gov.mb.ca](mailto:publicutilities@gov.mb.ca)) within 10 days of the date of the confirmation letter from the distributor.
- 7.2 A marketer shall not assign, sell, or otherwise transfer the administration of a contract to another person who is

not a registered marketer. Within 60 days after any assignment, sale or transfer of the administration of a contract to another registered marketer, the new marketer must send to any affected consumer a notice of assignment which includes the new marketer's address for service and the telephone number advising the consumer that within 30 days of the receipt of such a notice of assignment a consumer may notify the new marketer that it wishes to cancel its contract and the marketer shall thereupon cancel the contract.

## **8. DISPUTE RESOLUTION PROCESS**

- 8.1 Where a consumer wishes to make a complaint against a marketer with which the consumer has signed a contract or where a contract was offered by the marketer respecting the conduct, business or affairs of the marketer involved in marketing or selling natural gas to the consumer, the consumer may file a complaint with the Board. The complaint should be referred first to the marketer in question to discuss or resolve the complaint.
- 8.2 A marketer shall use good faith efforts to attempt to resolve all consumer complaints and inquiries made to it.
- 8.3 If for any reason a marketer cannot resolve a consumer complaint, the marketer shall inform the consumer that they may refer the complaint to the Board which will hear and determine consumer complaints.
- 8.4 At the time a consumer makes a complaint about a marketer to the Board it shall provide the marketer with a written summary of the complaint and any documents on which the consumer bases the complaint.

- 8.5 After receiving a complaint from a consumer about a marketer, the Board shall advise the consumer and the marketer of a time and place at which the consumer's complaint will be heard and determined. The consumer or marketer may attend the hearing in person or participate by telephone conference.
- 8.6 At a hearing the consumer first will present its complaint and the marketer then will have an opportunity to respond.
- 8.7 After hearing the consumer's complaint and the marketer's response, and the response to any follow-up questions addressed to either party, the Board shall determine whether the marketer has contravened any provision of this Code.
- 8.8 If the Board determines that the marketer has not contravened any provision of this Code, the Board shall dismiss the complaint.
- 8.9 If the Board determines that the marketer has contravened this Code, the Board may impose any or all of the following remedies or penalties for each breach:
  - (a) reprimand the marketer;
  - (b) declare that any contract between the consumer or any group of consumers affected in a similar manner and the marketer does not qualify for any direct purchase service offered by the distributor and direct the distributor to accept a request by the consumer and or any group of customers affected in a similar manner to return to purchasing their natural gas from the distributor;
  - (c) levy such fees or charges as set by the Board.

- 8.10 Any determination made by the Board pursuant to this section does not affect, determine, limit, or exclude any legal rights or remedies possessed by either the consumer or the marketer arising from any matter existing between them.
- 8.11 Any complaint by a consumer who has not signed a contract with the marketer that is the subject of the complaint should be referred by the Board to the marketer in question to discuss the complaint. If the complainant is not prepared to contact the marketer, the Board will accept the complaint. A summary of the complaint and copies of any supporting documentation will be sent to the marketer and the marketer given an opportunity to respond to the complaint. Where the Board considers the complaint to have merit, the complaint and the marketer's response will be dealt with in accordance with the provisions of the Act.
- 8.12 Any complaint by a person who is not a customer that a marketer has failed to comply with the provisions of this Code will be referred first to the marketer in question to discuss the complaint. If for any reason a marketer cannot resolve the complaint, the person may refer the complaint to the Board to be dealt with in accordance with the provisions of the Act.