

CODE OF CONDUCT FOR GAS MARKETERS

**Rule Made under Part III of
the *Ontario Energy Board Act, 1998***

Ontario Energy Board

2 March 1999

Table of Contents

1.	INTRODUCTION	-1-
1.1	Definitions	-1-
1.2	Interpretations	-3-
1.3	This Code	-3-
1.4	Coming into Force	-3-
2.	STANDARDS AND PRINCIPLES	-4-
2.1	Fair Marketing Practices	-4-
2.2	Identification	-5-
2.3	Information to be Maintained by a Gas Marketer	-6-
2.4	Confidentiality of Consumer Information	-6-
2.5	Conditions in Offers	-7-
2.6	Contracts	-8-
2.7	Contract Renewals	-9-
2.8	Transfers and Assignment of Contracts	-10-
2.9	Consumer Complaint Resolution Process	-10-
2.10	Breach of this Code	-11-

1. INTRODUCTION

1.1 Definitions

In this Code, unless the context otherwise requires:

“*Act*” means the *Ontario Energy Board Act, 1998*;

“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;

“Board” means the Ontario Energy Board;

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

“consumer” means a low-volume consumer;

“consumer information” means information relating to a specific consumer obtained by a gas marketer or its salesperson from a 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 business day, not including weekends or statutory holidays;

“Director” means the Director of Licensing appointed by the Board under section 5 of the *Act*;

“distributor” means a person who owns or operates a distribution system for the purpose of delivering gas to consumers;

“gas” means natural gas, substitute natural gas, synthetic gas, manufactured gas, propane-air gas or any mixture of any of them;

“gas marketer” means a person who is licensed under Part IV of the Act and,

- (a) sells or offers to sell gas to a low-volume consumer;
- (b) acts as the agent or broker for a seller of gas to a low-volume consumer; or
- (c) acts or offers to act as the agent or broker of a low-volume consumer in the purchase of gas;

and “gas marketing” has a corresponding meaning;

“in writing” means communication through writing, facsimile, or any other means of communication considered legally binding in the Province of Ontario;

“low-volume consumer” means a person who annually uses less than 50,000 cubic metres of gas;

“manufactured gas” means any artificially produced fuel gas, except acetylene and any other gas used principally in welding or cutting metals;

“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 a salesperson interacts directly with a gas 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 natural gas;

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

“propane” means a hydrocarbon consisting of 95 per cent or more of propane, propylene, butane or butylene, or any blend thereof;

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

“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 or entering into agency agreements with low-volume consumers;

“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.

1.2 Interpretations

Unless otherwise defined in this Code, words and phrases shall have the meaning ascribed to them in the *Ontario Energy Board Act, 1998*. Nothing in this code shall alter or affect the conditions of the licence of a gas marketer. Headings are for convenience only and shall not affect the interpretation of this Code. Words importing the singular include the plural and vice versa.

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 low-volume 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 comes into force on March 2, 1999.

2. 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 Protection Act* (Ontario), the *Business Practices Act* (Ontario) 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 regulated distributor, and not seek to mislead or otherwise create any confusion in the mind of a consumer about the identity of the marketer, or about the trademarks of the regulated 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;
- (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 distributor to allow the gas marketer to supply gas to a consumer unless the gas marketer has the permission of the 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 distributor's service, the gas 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 is licensed, 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 a gas marketer's business premises:

- name in which the gas marketer is licensed;
- gas marketer licence number;
- telephone number of the gas marketer that may be reached by the general public;
- name of the salesperson; and
- photograph of the salesperson, if marketing door-to-door.

2.2.3 A gas marketer shall have a mailing address in Ontario and shall have a telephone number which may be reached by the general public.

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 Director upon request.

2.3.2 A gas marketer shall maintain on file:

- (a) a list of its customers;
- (b) permission from each customer, in writing, to submit a request to a distributor to allow the gas marketer to supply gas to the customer;
- (c) agreement from each customer, in writing, to purchase gas from the gas marketer or for the gas marketer to purchase gas as agent for the customer; and
- (d) if different from the agreement, a copy of the complete contract which the gas marketer has with each customer.

2.4 Confidentiality of Consumer Information

2.4.1 A gas marketer shall not disclose consumer information (as defined in this Code) 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.

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 inform consumers regarding the conditions described in clause 2.4.1 under which consumer information may be released to a third party without the consumer's consent.

2.4.4 A gas marketer shall not use consumer information obtained for one purpose from a consumer for any other purpose without the consent of the consumer in writing.

2.5 Conditions in Offers

2.5.1 An offer shall clearly indicate the time period for which the contract is in effect, and any terms and conditions for renewal.

2.5.2 An offer shall clearly state the price, terms of payment and if other terms such as:

- deposits;
- exit fees;
- late charges;
- the nature and amount of any other charges related to the contract;
- type and frequency of bills the customer will receive;
- how to make a complaint to or enquiry of the gas marketer;
- how to access an independent customer complaints resolution process;
- rescission rights of the customer;
- reasons for which the contract may be terminated;
- whether the contract can be transferred or assigned to another gas marketer;

are included, these must also be stated clearly in the offer.

2.5.3 An offer shall contain clear statements as to the intended start date for the contract and conditions under which the start date may not be met.

2.5.4 A gas marketer shall provide the consumer with a copy of the contract and/or agency agreement at the time the contract or agreement is entered into.

2.5.5 An offer to 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.

2.6 Contracts

A gas marketer's licence includes certain requirements with respect to contracts. In the case of conflict between the licence conditions and this Code, the licence conditions shall prevail.

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 and leading to the contract.

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 in writing 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 The licence holder 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.

2.6.5 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.

2.7 Contract Renewals

2.7.1 A contract that is renewed shall be consistent with the requirements placed on contracts as a condition of the gas marketer's licence and in accordance with this Code.

2.7.2 A gas marketer shall not renew a contract with a consumer unless the original contract contains terms of renewal, and the consumer:

(a) receives an advance written notice of the renewal 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.

2.7.3 A contract with a consumer that is renewed shall be consistent with the terms of the original contract, unless the consumer gives permission in writing to implement the new terms.

2.7.4 Notwithstanding subsection 2.7.3, 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 written confirmation of the consumer, 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.

2.8 Assignment, Sale and Transfer of Contracts

2.8.1 A gas marketer shall not assign, sell or otherwise transfer the administration of a contract to another person who is not a licensed gas marketer.

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

2.9 Independent Arms-Length Consumer Complaints Resolution Process

2.9.1 A gas marketer is required to attempt to resolve all consumer complaints and inquiries before referring a customer complaint or inquiry to any independent, arms-length consumer complaints resolution process specified as of a condition of the gas marketer's licence.

2.9.2 A gas marketer shall inform its prospective consumers in all written offers and contracts about the independent, arms-length consumer complaints resolution process selected by the Board for that gas marketer.

2.9.3 A gas marketer shall inform existing customers about the independent, arms-length consumer complaints resolution process specified by the Board at the time of renewal of any contract and at the time a complaint is received by the gas marketer.

2.9.4 Should any consumer complain that a gas marketer or its salespersons have engaged in any improper course of conduct while marketing, the gas marketer shall investigate the complaint and take all appropriate and necessary steps consistent with the independent arms-length consumer complaints resolution process specified by the Board.

2.10 Breach of this Code

2.10.1 Under section 52 of the *Act*, a gas marketer's licence can be suspended or revoked if the licence holder does not comply with this Code as issued and amended by the Board from time to time under Part III 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.

End of Document