

M A N I T O B A) **Order No. 81/04**
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THE PUBLIC UTILITIES BOARD ACT) **June 1, 2004**

BEFORE: Graham F. J. Lane, B.A., C.A., Chairman
Monica Girouard, C.G.A., Member
Mario J. Santos, B.A., LL.B., Member

AN ORDER AMENDING THE CODE OF CONDUCT
APPROVED PURSUANT TO BOARD ORDER NO. 49/00

In Order No. 49/00, the Board approved amongst other matters the Code of Conduct for Direct Purchase Transactions ("Code"). The Code governs the activities of licensed Natural Gas Brokers in Manitoba. Clause 2.2 of the Code provides that the Board "may on its own motion, or on application by others, amend this Code from time to time".

In the recent past, the Board received a number of telephone enquiries from customers of Brokers with reference to Clause 8, Renewal of the Code. When included in the customer agreement, this provision allows a Broker to extend by a further 90 days the termination date of a customer agreement if the customer has not responded to the Broker's renewal letter.

By way of letter dated February 16, 2004, the Board invited comments from the distributor, Centra Gas, brokers and intervenors on the renewal process, and suggested the elimination of the 90 day rollover. It was also suggested that there be a requirement for the Broker to advise the distributor of customers agreeing to a renewal, of customers refusing to renew, and of customers who had not responded to the renewal request. The distributor would end the agreements of all customers who had refused to renew or had not responded by the date stipulated in the renewal letter.

Until this matter could be dealt with by the Board fully, the Board asked Brokers to immediately begin inserting on all letters of renewal for existing agreements which includes the 90 day rollover provision, and in clearly identifiable bold print, the words:

"IF YOU DO NOT RESPOND TO THIS LETTER, YOUR EXISTING CONTRACT WILL BE CONTINUED FOR A FURTHER 90 DAYS AT THE PRICE OFFERED HEREIN."

The Board received comments from Direct Energy, dated April 5, 2004, and from Centra Gas on April 28, 2004. Direct Energy summarized its position as follows:

"Direct Energy agrees with the PUB's assessment that customers require clearer information in respect of their contract renewal options. To that end, Direct Energy proposes a number of consumer disclosure measures that could be required at the time of contract renewal and that would address the PUB's concerns regarding the lack of customer information in respect of the renewal process. Direct Energy disagrees, however, that the current provision in the Code of Conduct that provides a one time, 90 day automatic renewal option should be rescinded. Direct Energy submits that in accepting a contract that provides for such an automatic 90 day renewal, customers have authorized

their broker to continue to supply gas to them through to the end of the 90 day post expiry renewal period. Direct Energy further submits that the removal of this provision will effectively reduce by 60% the current time frame within which: the customer may consider their options; the distributor may manage customers' return to system supply; and the broker may contact the customer."

In its letter, Centra indicated no objection to the removal of the 90 day rollover clause and noted that from an operational standpoint it was able to accommodate changes to the customer contracts within the contemplated 30 day period ending on a gas quarter. Centra suggested as an alternative that the communication timeframe on renewal be increased from 90 days to 120 days prior to the expiry of the contract.

Board Findings

The Board has considered the submissions of the parties, and reflected on the issues and the options. The Board is of the position that it is in the interest of all parties that the terms and conditions of the agreement be comprehensive and transparent. The Board accepts that evergreen provisions can be part of a contract, but is of the opinion that this is not suitable in these circumstances.

Accordingly, the Board will prohibit the inclusion of any rollover provision in the customer agreement from the date of this Order. The Board will also require that all renewal letters for existing contracts which include the 90 day rollover provisions must include the insert as noted above in bold letters. As well, the Board will accept Centra's suggestion to extend the renewal period to 120 days prior to the expiry of the contract.

IT IS THEREFORE ORDERED THAT:

1. For all existing agreements issued prior to this date between a Broker and a customer and which includes the 90 day rollover provisions, the Broker will indicate in clearly identifiable bold print on all letters of renewal:

"IF YOU DO NOT RESPOND TO THIS LETTER YOUR EXISTING CONTRACT WILL BE CONTINUED FOR A FURTHER 90 DAYS AT THE PRICE OFFERED HEREIN."

2. In Clause 8.1 Renewals, of the Code of Conduct the words "and no more than 90 days in advance" is amended to read "and no more than 120 days in advance".
3. Clause 8.2 renewals, IS HEREBY DELETED.
4. The Amended Code to reflect Items 2 and 3 above is attached as Schedule "A".

THE PUBLIC UTILITIES BOARD

"GRAHAM F. J. LANE, B.A., C.A., "
Chairman

"H. M. SINGH"
Acting Secretary

Certified a true copy of Order No.
81/04 issued by The Public
Utilities Board

Acting Secretary

SCHEDULE "A"

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.

1. DEFINITIONS

1.1 In this Code, unless the context otherwise requires:

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

"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 natural gas purchases and or sales; and

"agency" has a corresponding meaning;

"Board" means the Public Utilities Board of Manitoba;

"broker" 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.

"consumer" means a person who uses natural gas;

"consumer information" means information relating to a specific consumer, which is obtained by a broker 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;

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

“default price” means the price specified by a broker in the advance written notice of renewal sent to a customer pursuant to section 8.1 of this Code.

“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;

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

“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 broker or a 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 natural gas;

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

“price” means a determined amount of money or an amount of money determinable on a ¢/cubic metre basis of natural gas, plus any fees or charges to be paid by the consumer for the benefit of the broker;

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

“third party” with respect to a broker, means a person other than the broker, and includes other brokers, affiliates, consumers and other persons.

2. APPLICATION and AMENDMENT

- 2.1 Any broker who offers a direct purchase arrangement to a consumer must be licensed and registered to do business in the Province of Manitoba and be licensed as a broker 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 broker shall ensure that its salespersons adhere to the same standards required of the broker as set out in this Code.

3.2 A broker 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 broker or its salesperson, 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 the legibility or clarity of documents provided to consumers.

3.3 Where a broker's marketing or advertising contains representations concerning the nature, quality and price of any distributor's or supplier's service, the broker shall take such steps as are reasonable and appropriate to ensure that such representations are timely, accurate, verifiable and truthful.

3.4 An offer shall clearly indicate the time period for which the contract is in effect, and any terms and conditions for renewal. An offer 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 broker;
- how to access the customer complaints resolution process described in Section 9 of this Code;
- cancellation rights of the customer;
- reasons for which the contract may be terminated; and
- whether the contract can be transferred or assigned to another broker.

Where offers contain any of the following material terms they must be stated clearly:

- deposits required by broker;
- exit fees payable to the broker;
- late charges if applicable;
- the nature and amount of any other charges payable to the broker related to the contract; and
- type and frequency of bills the customer will receive if applicable.

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

3.6 Any agency agreement used by a broker shall clearly indicate on the front page the price in ¢/ cubic meter together with any other fees payable to the broker and the duration of the contract.

- 3.7 A broker shall file with the Board its form of agency agreement and any amendments thereto.
- 3.8 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.
- 3.9 A broker must provide the distributor with evidence of the written permission of the customer authorizing the broker to supply gas to a consumer.
- 3.10 A broker shall not enter into any contract with a consumer that is inconsistent with the offer made to the consumer leading to the contract.

4. IDENTIFICATION

- 4.1 A broker 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 broker for whom that salesperson acts.
- 4.2 A broker shall provide the following information when marketing at a place other than its business premises:
- name in which the broker is registered;
 - telephone number of the broker that may be reached by the general public;
 - name of the salesperson; and
 - photograph of the salesperson, if marketing door-to-door.
- 4.3 A broker shall have a Manitoba or toll-free telephone number which may be reached by the general public.

5. INFORMATION TO BE MAINTAINED BY A NATURAL GAS BROKER

- 5.1 A broker shall maintain on file:
- (a) a list of salespersons;
 - (b) a list of its customers;

- (c) permission from each consumer, in writing, to submit a request to a distributor to allow the broker to supply gas or arrange the gas supply to the consumer;
- (d) agreement from each consumer, in writing, to purchase gas from the broker or for the broker to purchase gas as agent for the consumer; and
- (e) if different from the agreement, a copy of the complete contract which the broker has with each consumer;

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.

6. CONSUMER INFORMATION

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

6.3 A broker shall inform consumers that consumer information may be released to a third party without the consumer'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

- 7.1 Every contract which a broker enters into with a consumer shall include a condition that allows the consumer to cancel 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 cancellation.
- 7.2 A broker shall not enter into any contract as the agent of a consumer within 10 days after being appointed as the consumer's agent.
- 7.3 A broker shall not assign, sell or otherwise transfer the administration of a contract to another person who is not a registered broker. Within 60 days after any assignment, sale or transfer of the administration of a contract to another registered broker, the new broker must send to any affected customer a notice of assignment which includes the new broker's address for service and the telephone number. Within 30 days of the receipt of such a notice of assignment a consumer may notify the new broker that it wishes to cancel its contract and the broker shall thereupon cancel the contract.

8. RENEWALS

- 8.1 A broker shall not renew a contract with a consumer unless the original contract contains terms of renewal and the consumer receives advance written notice of the terms of renewal at least 30 days in advance, and no more than 120 days in advance, of the date of renewal. The renewal notice shall specify the terms and conditions of renewal as well as a default price.
- 8.2 Nothing in section 8.1 prevents a broker from entering into a new contract with a consumer at any time.

9. DISPUTE RESOLUTION PROCESS

- 9.1 Where a consumer wishes to make a complaint against a broker with which the consumer has signed an agency agreement respecting the conduct, business or affairs of the broker involved in marketing or selling natural gas to the consumer, the consumer should be referred first to the broker in question to discuss the complaint.

- 9.2 A broker shall use good faith efforts to attempt to resolve all consumer complaints and inquiries made to it.
- 9.3 If for any reason a broker cannot resolve a consumer complaint, the broker shall inform the consumer that it may refer the complaint to the person designated under section 9.4 to hear and determine consumer complaints.
- 9.4 To assist in resolving consumer complaints against brokers, the Board may designate a member of the Board, Board staff or other person or persons (the "Designated Person") to hear and determine any consumer complaints regarding compliance by the broker with the provisions of this Code. The Designated Person has the power to dispose of any such consumer complaint in the manner set out in Sections 9.9 and 9.10.
- 9.5 At the time a consumer makes a complaint about a broker to the Designated Person, the Designated Person shall provide the broker with a written summary of the complaint and any documents on which the consumer bases the complaint.
- 9.6 Within 5 days of receiving a complaint from a consumer about a broker, the Designated Person shall advise the consumer and the broker of a time and place at which the consumer's complaint will be heard and determined. The consumer or broker may attend the hearing in person or participate by telephone conference.
- 9.7 At a hearing the consumer first will present its complaint and the broker then will have an opportunity to respond.
- 9.8 After hearing the consumer's complaint and the broker's response, and the response to any follow-up questions addressed to either party, the Designated Person shall determine whether the broker has contravened any provision of this Code.
- 9.9 If the Designated Person determines that the broker has not contravened any provision of this Code, the Designated Person shall dismiss the complaint.
- 9.10 If the Designated Person determines that the broker has contravened this Code, the Designated Person may impose any of the following remedies or penalties for each breach:
- (a) reprimand the broker;

- (b) declare that any contract between the consumer and the broker does not qualify for any direct purchase service offered by the distributor and direct the distributor to accept a request by the consumer to return to system supply; or
 - (c) refer the issue to the Board for further review.
- 9.11 Any determination made by the Designated Person pursuant to this section does not affect, determine, limit or exclude any legal rights or remedies possessed by either the consumer or the broker arising from any matter existing between them.
- 9.12 Any complaint by a consumer who has not signed an agency agreement with the broker that is the subject of the complaint should be referred by the Designated Person to the broker in question to discuss the complaint. If for any reason a broker cannot resolve the complaint, or if the complainant is not prepared to contact the broker, the Designated Person should accept the complaint. A summary of the complaint and copies of any supporting documentation should be sent to the broker and the broker given an opportunity to respond to the complaint. Where the Designated Person considers the complaint to have merit, the complaint and the broker's response should be forwarded to the Secretary of the Board to be dealt with in accordance with the provisions of the Act.
- 9.13 Any complaint by a person who is not a consumer that a broker has failed to comply with the provisions of this Code should be referred first to the broker in question to discuss the complaint. If for any reason a broker cannot resolve the complaint, the person may refer the complaint to the Secretary of the Board to be dealt with in accordance with the provisions of the Act.