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The Lieutenant Governor in Council makes the Code of Conduct Regulation set out in the attached Appendix.

For Information only

Recommended by: Minister of Energy

Authority: Gas Utilities Act
(section 28.1)

A P P E N D I X

Gas Utilities Act

CODE OF CONDUCT REGULATION

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Part 1

Interpretation

Definitions

1(1) In this Regulation,

- (a) "Act" means the *Gas Utilities Act*;
- (b) "auditor" means an auditor appointed by a gas distributor, default supply provider or affiliated retailer under section 37;
- (c) "Board" means the Alberta Energy and Utilities

Board;

(d) "CICA Handbook" means the handbook published by the Canadian Institute of Chartered Accountants as amended from time to time;

(e) "compliance plan" means a compliance plan of a gas distributor or default supply provider or its affiliated retailer approved by the Board under this Regulation, as amended from time to time;

(f) "customer information" means information that is not available to the public and that

(i) is uniquely associated with a customer,

(ii) could be used to identify a customer, or

(iii) is provided by a customer to the gas distributor or default supply provider;

(g) "fair market value" means the price available in an open and unrestricted market between informed and prudent parties, acting at arm's length and under no compulsion to act, expressed in terms of money;

(h) "provide" includes sell;

(i) "regulated gas services" means gas services and gas distribution service

(i) that are provided by a gas distributor or default supply provider the access to which or the use of which is controlled by the gas distributor or default supply provider, and (ii) the costs of which are recoverable under a tariff approved by the Board.

(2) Where a gas distributor, a default supply provider or a retailer authorizes another person to perform functions on its behalf, a reference in this Regulation to the gas distributor, default supply provider or retailer is also to be read as a

reference to that other person.

(3) Terms used in this Regulation that are defined in the Act have the same meaning as they have in the Act.

Definition of
affiliated retailer

2(1) For the purposes of the Act and regulations made under the Act, "affiliated retailer" means a retailer that is an affiliate of a gas distributor or default supply provider.

(2) For the purposes of the Act and the regulations made under the Act, a retailer is an affiliate of a gas distributor or default supply provider

(a) if the retailer

(i) is a corporation of which the gas distributor or default supply provider legally or beneficially owns or controls, directly or indirectly,

(A) at least 10% of the voting shares or securities that are convertible into at least 10% of the voting shares, or

(B) an exercisable option or right to purchase at least 10% of the voting shares or securities that are convertible into at least 10% of the voting shares,

(ii) is a member of a joint venture with the gas distributor or default supply provider or in partnership with the gas distributor or default supply provider, including a general partner of a limited partnership,

(iii) shares office space or office equipment with the gas distributor or default supply provider,

(iv) accesses or uses the gas distributor's or default supply provider's computer system or the gas distributor's or default supply provider's information system, or

(v) jointly employs or engages persons with the gas distributor or default supply provider,

or

(b) if another person legally or beneficially owns or controls, directly or indirectly, at least a 10% interest in each of the retailer and the gas distributor or default supply provider, by way of voting shares, securities that are convertible into voting shares, an exercisable option or right to purchase voting shares or securities that are convertible into voting shares or otherwise.

Part 2

Conduct of Gas Distributors or Default

Supply Providers and Retailers

Behaviour of gas distributors, default supply providers and retailers

3(1) Gas distributors, default supply providers and retailers must conduct themselves and their activities so as to comply with and ensure compliance with this Regulation.

(2) Gas distributors, default supply providers and affiliated retailers must conduct themselves and their activities so as to comply with and ensure compliance with their respective compliance plans.

Division 1

Equality of Treatment for Customers

Tying prohibited

4 Neither a gas distributor or default support provider nor its affiliated retailer may require or induce customers to acquire goods or services from the affiliated retailer or any other retailer by making or appearing to make regulated gas services conditional on the acquisition of those goods or services.

Transfer of customers

5 Neither a gas distributor nor a default supply provider

may, without the customer's consent,

- (a) transfer the customer to another retailer, or
- (b) transfer the customer to another retail gas services tariff.

Representations

6 Neither a gas distributor or default supply provider nor its affiliated retailer may represent that customers of any retailer receive treatment from the gas distributor or default supply provider that is different from the treatment that customers of other retailers receive from the gas distributor or default supply provider.

Advertising

7 If the name and logo of a gas distributor or default supply provider and its affiliated retailer do not clearly indicate that they are separate entities, the affiliated retailer must, in any internet text or written material published or sent that markets retail gas services, include conspicuous statements to the following effect:

- (a) that customers are not required to acquire gas or other goods or services from the affiliated retailer in order to receive regulated gas services from the gas distributor or default supply provider;

- (b) the place where customers may obtain the current list of licensed retailers maintained in accordance with the *Fair Trading Act* and the regulations under that Act.

Meetings by gas distributor or default supply provider with retailers and customers

8 A gas distributor and a default supply provider must make a reasonable effort to be equally available to all retailers for joint meetings with the retailer and the retailer's customers.

Division 2

Confidentiality of Customer Information

Confidentiality rule

9 Gas distributors, default supply providers and retailers must, in accordance with this Regulation, protect the confidentiality of customer information.

Disclosure of customer information with consent

10(1) Neither a gas distributor or default supply provider nor a retailer, nor an officer, employee, contractor or agent of any of them, may disclose customer information to any person without the consent of the person that is the

subject of the information unless

(a) the information is aggregated customer information disclosed in accordance with section 14,

(b) the disclosure is solely for the purpose of preventing interruption of gas services or gas distribution service, or

(c) the disclosure is permitted under subsection (3).

(2) A consent by a customer has no effect unless the consent

(a) itemizes the customer information that is authorized to be disclosed,

(b) states the period of time that the consent is in effect, and

(c) states whether the customer information may be released to one, some or all retailers.

(3) Customer information may be disclosed without the customer's consent, to the following specific persons or for any of the following purposes:

(a) to the customer's retailer;

(b) to the customer's default supply provider;

(c) for the purpose of an audit under Part 4;

(d) for the purpose of a court proceeding or a proceeding before a quasi-judicial body to which the customer is a party;

(e) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to require or compel the production of information or with a rule of court that relates to the production of information;

(f) to a peace officer for the purpose of investigating an offence, if the disclosure is not contrary to the express

request of the customer;

(g) if required by law or by an order of a government agency having jurisdiction over the gas distributor, default supply provider or retailer;

(h) if required by the Board or person authorized by the Board;

(i) for the purpose of billing customers;

(j) for the purpose of collecting a customer's unpaid bill.

Disclosure to 2 or more retailers

11 If a customer authorizes that customer's information to be disclosed by a gas distributor or default supply provider to 2 or more retailers, the gas distributor or default supply provider must disclose the information to those retailers at the same time and in the same manner.

Conditions on disclosure by gas distributor or default supply provider

12 If a retailer obtains the consent of a customer for the release of that customer's customer information from a gas distributor or default supply provider, the gas distributor or default supply provider

(a) must within 7 days of a request by the retailer and receipt of the customer's consent, disclose the information to the retailer, and

(b) must not inform any other person that the customer information has been requested or was disclosed.

Historical gas consumption

13 If a customer consents to historical gas consumption being disclosed, the gas distributor or default supply provider must, within 15 days of receipt of a written disclosure request, give the applicant the historical information

(a) for the 12-month period preceding the date of the request, or

(b) if that information has not been collected for a 12-month period, for any period preceding the date of the request for which that information has been collected.

Aggregated customer information

14 A gas distributor or default supply provider may make available to a retailer, at not more than its cost to do so,

aggregated customer information if

(a) the aggregation service is available to all retailers under the same terms and conditions, (b) customer information has been aggregated to such a degree that the information of an individual customer or retailer cannot be readily identified, and

(c) at least 24 hours before aggregated customer information is made available to a retailer, the gas distributor or default supply provider places on its website a notice containing a clear description of the information and the cost of obtaining the information, and then keeps the notice on its website for a least 30 days.

Division 3

Equality of Treatment of Retailers

Equal treatment

15 Unless otherwise permitted by the Act or the regulations made under the Act, a gas distributor must not, in the terms and conditions that govern regulated gas services provided by the gas distributor,

(a) give preferential treatment to its affiliated retailer or to customers of its affiliated retailer, or

(b) discriminate against any retailer or against customers of any retailer.

Equal notice of changes

16 If a gas distributor intends to make changes

(a) in its regulated gas services, or

(b) to the terms and conditions that apply to those regulated gas services,

it must inform all retailers of the intended changes at the same time and in the same manner.

Division 4

Business Practices of Gas Distributors,

Default Supply Providers and Retailers

Conditions of
access to written
communica-tions
with customers

17 When a gas distributor or default supply provider allows a retailer to access the gas distributor's or default supply provider's written communications, including billing envelopes, with customers for sales or marketing purposes, the communications by the retailer must conspicuously

- (a) state that customers are free to choose other retailers, and
- (b) refer the customer to a source where the customer may obtain the current list of licensed retailers maintained in accordance with the *Fair Trading Act* and the regulations under that Act.

Prohibitions

18(1) A gas distributor or default supply provider must not

- (a) give information about retail gas services in a manner that encourages a customer to contact one retailer in preference to other retailers;
- (b) solicit business of behalf of a retailer;
- (c) give the appearance that it speaks on behalf of a retailer or that a retailer speaks on its behalf;
- (d) give customers advice or assistance about a retailer, except to refer a customer to a source where the customer may obtain the current list of licensed retailers maintained in accordance with the *Fair Trading Act* and the regulations under that Act;
- (e) permit website users to access web pages relating to retail gas services from web pages relating to regulated gas services, or vice versa, unless a warning is displayed immediately when one website is accessed from the other that conspicuously
 - (i) states that customers are free to choose other retailers, and
 - (ii) refers the customer to a source where the customer may obtain the current list of licensed retailers maintained in accordance with the *Fair*

Trading Act and the regulations under that Act.

(2) If a customer requests information about retail gas services from a gas distributor or default supply provider, the gas distributor or default supply provider must refer the customer to a source where the customer may obtain the current list of licensed retailers maintained in accordance with the *Fair Trading Act* and regulations under that Act.

(3) Subsection (1) does not apply to information contained in a gas distributor's or default supply provider's billing envelope if the information complies with section 19.

Part 3

Relationship Between Gas Distributors or

Default Supply Providers and their

Affiliated Retailers

Division 1

Preventing Unfair Competitive Advantage

Efficiency without
unfair competition

19 A gas distributor or default supply provider and its affiliated retailer may make arrangements to create cost efficiencies in their operations but, in doing so, must not create an unfair competitive advantage for the affiliated retailer.

Non-disclosure of
customer
information for
marketing or sales
purposes

20(1) Arrangements between a gas distributor or default supply provider and its affiliated retailer do not create an unfair competitive advantage if

(a) no customer information is disclosed that could be used by the affiliated retailer for marketing or sales purposes, and the gas distributor or default supply provider and its affiliated retailer each

(i) describe in their compliance plans how the disclosure is prevented, and

(ii) have in place appropriate data management and information access

protocols to ensure customer information is not improperly disclosed,

or

(b) the gas distributor or default supply provider and its affiliated retailer each

(i) include in their compliance plans systems, policies and mechanisms to ensure that no customer information received by the affiliated retailer from the gas distributor or default supply provider is used by the affiliated retailer for marketing or sales purposes, and

(ii) have in place appropriate data management and information access protocols to ensure customer information is not improperly used.

(2) Subsection (1) does not apply to any customer information that is permitted to be disclosed under this Regulation.

Customer information from employees and others

21 A retailer that seeks or receives customer information from a current or former officer, employee, agent or contractor of a gas distributor or default supply provider for sales or marketing purposes seeks or obtains an unfair competitive advantage unless this Regulation permits the retailer to have that customer information.

Joint acquisitions, research and dispositions

22 The following arrangements between a gas distributor or default supply provider and its affiliated retailer create an unfair competitive advantage for the affiliated retailer if, without appropriately allocating and recording the economic benefits or costs between the gas distributor or default supply provider and its affiliated retailer in a manner that is in accordance with the economic benefits or costs attributable to each party,

(a) a gas distributor or default supply provider and its affiliated retailer make joint acquisitions,

(b) a gas distributor or default supply provider and its affiliated retailer share costs or expenses associated with research and development or investment in

research and development, or

(c) a gas distributor or default supply provider or its affiliated retailer separately or jointly sells, leases, gives or otherwise disposes of, jointly acquired property.

Goods and services transactions to be at fair market value

23(1) The sale, lease, exchange, transfer or other disposition of goods or services between a gas distributor or default supply provider and its affiliated retailer is an unfair competitive advantage for the affiliated retailer if the transaction is for other than fair market value.(2) If the value of the transaction for goods or service is regulated by a municipal, provincial or federal government or government agency, the regulated value is to be considered the fair market value.

Financial transactions

24 A loan, guarantee, security or other financial transaction by a gas distributor or default supply provider to, or on behalf of its affiliated retailer on terms more favourable to the affiliated retailer than the affiliated retailer could obtain on the open market constitutes an unfair competitive advantage for the affiliated retailer.

Access to publicly available information

25 If information in a gas distributor's or default supply provider's information system is available to the public, nothing in this Regulation

(a) prevents the gas distributor or default supply provider from giving a retailer unrestricted access to the same information, or

(b) prevents a retailer from obtaining or using that information.

Division 2

Separate Records and Accounts

Records and accounts

26(1) A gas distributor or default supply provider and an affiliated retailer must each keep records and accounts that are separate from each other.

(2) An affiliated retailer must

(a) keep sufficient records and accounts to enable an

audit to be conducted under Part 4, and

(b) keep accounts in accordance with generally accepted accounting principles.

(3) A gas distributor or default supply provider must

(a) keep sufficient records and accounts to enable an audit to be conducted under Part 4,

(b) comply with any guidelines or uniform system of record keeping required by the Board, and

(c) keep accounts

(i) in accordance with generally accepted accounting principles, and

(ii) in accordance with any guidelines or uniform system of accounting required by the Board.

Written financial transactions

27 Every financial transaction between a gas distributor or default supply provider and an affiliated retailer must be in writing.

Transaction records

28(1) Each gas distributor or default supply provider and each affiliated retailer must maintain a record of

(a) goods and services sold, leased, exchanged, given or otherwise disposed of between a gas distributor or default supply provider and its affiliated retailer, and

(b) the value of the transaction expressed in terms of money.

(2) All transactions for goods or services between a gas distributor or default supply provider and its affiliated retailer when the total cost of those transactions exceeds \$500 000 annually, must be documented by an agreement and must be supported by written evidence of fair market value.

Maintaining records

29 A gas distributor or default supply provider and an affiliated retailer must keep the records, accounts, financial transactions, reports and plans required by this

Regulation or a compliance plan for at least 6 years.

Part 4

Compliance Requirements

Division 1

Compliance Plans and Reports

Compliance plan

30(1) Before an affiliated retailer begins to provide retail gas services to customers, the affiliated retailer and its gas distributor or default supply provider must each

(a) prepare a compliance plan setting out the systems, policies and mechanisms that each intends to use to ensure that it and its officers, employees, agents and contractors comply with this Regulation,

(b) file the compliance plan with the Board,

(c) receive approval of the compliance plan from the Board, and

(d) send a copy of the compliance plan, as soon as it has been approved,

(i) in the case of the gas distributor's or default supply provider's compliance plan, to its affiliated retailers,

(ii) in the case of an affiliated retailer's compliance plan, to its gas distributor or default supply provider, and

(iii) in the case of a gas distributor's or default supply provider's or affiliated retailer's compliance plan, to its respective officers, employees, agents and contractors affected by the plan.

(2) A compliance plan must include at least

(a) in the case of the gas distributor's or default supply provider's compliance plan, a list of the gas distributor's or default supply provider's affiliated

retailers;

(b) the systems, policies and mechanisms in place to ensure compliance with this Regulation;

(c) a description of how the gas distributor's or default supply provider's or affiliated retailer's officers, employees, agents and contractors will become informed about this Regulation, the compliance plan and their duties and responsibilities;

(d) a description of how compliance with this Regulation and the compliance plan will be internally monitored by the gas distributor, default supply provider or affiliated retailer and how contraventions of this Regulation and the compliance plan will be enforced and internally resolved, including the name or names of the persons accountable for

(i) development of the plan;

(ii) implementing and monitoring the plan and recommending changes as required;

(iii) internally ensuring compliance with and enforcement of the plan and this Regulation;

(e) a description of the contents of quarterly reports to the board of directors of the gas distributor, default supply provider or affiliated retailer and the annual report to the Board required by section 33;

(f) a description of the means to ensure that auditors have sufficient access to officers, employees, agents and contractors, and information systems, of the gas distributor or default supply provider and affiliated retailer to perform the audit required under this Part;

(g) a description of how the communication to the public about the role of the Board required by section 34 will be carried out;

(h) a procedure for the voluntary resolution of complaints about non-compliance with the compliance

plan and this Regulation.

Approval by Board

31 The Board may approve a compliance plan, with or without changes and with or without conditions, and the plan remains in effect for the period prescribed by or until revoked by the Board.

Changes to compliance plan

32(1) Each gas distributor or default supply provider and its affiliated retailer must keep its compliance plan up to date and must make changes to the compliance plan to reflect changes in circumstances and changes to this Regulation.

(2) A change to a compliance plan must be submitted to the Board for approval

(a) within 60 days following a change in circumstances that requires a change to a compliance plan, or

(b) as soon as practicable, when a change in the compliance plan is made for a reason other than a change in circumstances.

(3) On receipt of a proposed change to a compliance plan, the Board may approve it, with or without changes, and with or without conditions, and may direct other changes to be made to the compliance plan.

(4) As soon as practicable after a change to a compliance plan has been approved

(a) the gas distributor or default supply provider must send a copy of the change to its affiliated retailer,

(b) the affiliated retailer must send a copy of the change to its affiliated gas distributor or default supply provider, and

(c) the gas distributor, default supply provider or affiliated retailer, as the case may be, must notify its respective officers, employees, agents and contractors who are affected by it of the change.

Quarterly and annual compliance reports

33(1) At least quarterly, compliance reports must be given to the board of directors by the senior management of each gas distributor or default supply provider and its affiliated

retailer describing at least

- (a) any non-compliance with this Regulation or the compliance plan,
- (b) the action taken to remedy the non-compliance, and
- (c) any complaints of non-compliance with this Regulation and the compliance plan and how the complaints have been dealt with.

(2) Within 30 days following the end of each calendar year, a gas distributor or default supply provider and its affiliated retailer must each send to the Board an annual compliance report, approved by the board of directors, describing for the calendar year the matters referred to in subsection (1).

Information about Board

34(1) A gas distributor or default supply provider and its affiliated retailer must, in accordance with their respective compliance plans, each give notice to the public that complaints about contraventions of this Regulation may be made to the Board.

(2) The notice must

- (a) be given so that the greatest number of people will become aware of it,
- (b) make clear that the Board is independent of gas distributors, default supply providers and affiliated retailers, and
- (c) be approved by the Board before it is given to the public.

Publication of plans and reports

35 The Board may make available to the public some or all of the contents of a compliance plan of a gas distributor, default supply provider or affiliated retailer or the annual compliance report of a gas distributor, default supply provider or affiliated retailer.

No release from obligations under Regulation

36 Compliance by a gas distributor, default supply provider or affiliated retailer with its compliance plan does not release the gas distributor, default supply provider or affiliated retailer from complying with this Regulation.

Division 2

Compliance Audit

Appointment of auditor

37 A gas distributor or default supply provider and its affiliated retailer must each appoint an independent auditor to perform an audit, composed of an independent examination of the gas distributor or default supply provider or its affiliated retailer for the purpose of expressing an opinion in accordance with this Regulation.

Approval of audit plan required

38(1) Before the audit is undertaken, the auditor must

- (a) be approved by the Board,
- (b) submit a work plan to the Board describing the audit, the review procedures to be used and the scope of the work, and
- (c) receive approval of the work plan from the Board.

(2) If, in the opinion of the Board, the auditor selected by the gas distributor or default supply provider or its affiliated retailer is not appropriate or the nature and scope of the work plan is not adequate, the Board may appoint another auditor to conduct the audit.

(3) As part of its approval, the Board may require changes or additions to the work plan, including additional specific audit procedures.

Audit

39(1) An auditor must conduct an audit

- (a) not later than 6 months after the end of the calendar year in which a gas distributor's or default supply provider's affiliated retailer begins to provide retail gas services to customers, and
- (b) within 3 months following the end of each ensuing calendar year during which that affiliated retailer provides retail gas services to customers.

(2) The gas distributor or default supply provider and its affiliated retailer must give the auditor access to whatever information the auditor requires to conduct the audit.

(3) The auditor's costs and expenses are to be paid by the gas distributor, default supply provider or affiliated retailer whose records and accounts are audited under this Regulation.

Audit report

40(1) The auditor's report must be prepared as follows:

(a) the auditor must give a report in accordance with section 5815 of the CICA Handbook with respect to the following sections:

section 7;

section 17;

sections 22 to 24;

sections 26 to 29; (b) the auditor must give a report in accordance with section 8600 of the CICA Handbook with respect to all other sections of this Regulation that require compliance with the regulation by a gas distributor, default supply provider or affiliated retailer.

(2) If the auditor identifies contraventions of this Regulation or a compliance plan, the auditor must prepare a separate detailed report setting out the contravention and any action that has been taken by the gas distributor, default supply provider or affiliated retailer to address the contravention and prevent further contraventions.

(3) A gas distributor or default supply provider and its affiliated retailer must each send their audit report to the Board as soon as practicable after receiving it.

Part 5

Exemptions and Exceptions

Alternative
compliance
arrangements

41(1) A gas distributor or default supply provider or its affiliated retailer may apply to the Board

(a) for an exemption from all or any provision of this Regulation,

(b) for approval of an alternative compliance plan that meets the objectives of this Regulation but in a way that is different from the requirements of this

Regulation, or

(c) for an exemption from some provisions of this Regulation and an alternative compliance plan for others.

(2) The Board must not approve an exemption or an alternative compliance plan unless the Board is satisfied that it is in the public interest to do so and that

(a) any exemption does not significantly affect the obligations of the applicant, or that the obligations can be or will be met in other ways, and

(b) any alternative compliance plan

(i) contains overall, requirements and responsibilities that are at least as stringent as this Regulation,

(ii) is enforceable,

(iii) is in the best interests of customers, and

(iv) would not have any appreciable anti-competitive effects.

(3) The Board may approve an exemption or alternative compliance plan with or without changes and with or without conditions and the exemption or alternative compliance plan remains in effect for the period of time specified by, or until revoked by, the Board.

Emergency exceptions

42 Any action taken by a gas distributor or default supply provider or an affiliated retailer in response to an emergency that threatens public safety, the safety of its officers, employees, agents or contractors, the physical integrity of its facilities or system reliability does not contravene this Regulation or a compliance plan.

Part 6

Expiry and Coming into Force

Expiry

43 For the purpose of ensuring that this Regulation is

reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on April 30, 2013.

Coming into force

44 This Regulation comes into force on the coming into force of Part 2.1 of the *Gas Utilities Act*.