



DECISION

**IN THE MATTER OF the Board Hearing to
Consider Rules and Regulations Regarding
the Conduct of Gas Distributors and Marketers
in the Province of New Brunswick**

March 28, 2000

NEW BRUNSWICK

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

THE NEW BRUNSWICK

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

IN THE MATTER OF the Board Hearing to Consider Rules and Regulations Regarding the Conduct of Gas Distributors and Marketers in the Province of New Brunswick

Board:	David C. Nicholson – Chairman James Bateman – Vice Chairman John Chenier – Commissioner Jacques Dumont – Commissioner Léonard Larocque – Commissioner Emilien LeBreton – Commissioner Robert Richardson – Commissioner Monika Zauhar – Commissioner Lorraine Légère – Secretary M. Douglas Goss – Senior Advisor Carol Nykolyn – Advisor Gary Highfield – Director of Safety John Butler – Consultant James Easson – Consultant
ADI Limited:	Peter Dean
Business Round Table:	Rick DesBrisay
City of Moncton:	Don McLellan, Director, Corporate Support
City of Saint John:	Jim Baird, Manager, Community Planning
Coast Energy Canada Inc.:	Robert Fougere
Competition Bureau - Industry Canada:	Jim Sutton
Department of Natural Resources and Energy:	Don Barnett, Assistant Deputy Minister
Enbridge Gas New Brunswick:	David MacDougall, Solicitor Len Hoyt, Solicitor
Engage Energy Canada:	Ron Stitt, Regional Sales Manager
Irving Oil Limited:	Christopher J. Stewart, Solicitor
MariCo Oil & Gas Corporation:	Dennis Holbrook, Solicitor

Neill and Gunter:

John Stevens, Senior Project Manager

New Brunswick Power Corporation:

Michael Gardiner

Saint John Energy:

Tony Furness

EnergySource Canada (Semptra Energy Sales):

Peter Zed, Solicitor

Observers

TABLE OF CONTENTS

1.	<u>INTRODUCTION</u> -----	1
2.	<u>INFORMATION REQUIRED BY THE BOARD</u>	
2.1	INTRODUCTION-----	7
2.2	APPLICATION FORMS-----	7
2.3	CONFIDENTIALITY-----	7
2.4	POSTING OF SECURITY-----	8
2.5	INFORMATION ON SHAREHOLDERS-----	8
2.6	ADDITIONAL INFORMATION-----	9
2.7	SINGLE END USE FRANCHISE APPLICATIONS-----	9
2.8	FILING OF RESIDENTIAL GAS CONTRACTS-----	10
2.9	CHANGES IN CORPORATE STRUCTURE OF MARKETERS-----	10
2.10	RELATIONSHIP BETWEEN GAS DISTRIBUTOR AND ITS MARKETING AFFILIATE----	10
2.11	INFORMATION ON GAS SUPPLY AND TRANSPORTATION ARRANGEMENTS-----	11
2.12	REGULAR REPORTING-----	11
3.	<u>PROCESSING / REVIEW OF APPLICATIONS</u>	
3.1	INTRODUCTION-----	13
3.2	PUBLIC NOTICE OF MARKETERS' APPLICATIONS-----	13
3.3	BUSINESS AND FINANCIAL REVIEW-----	13
3.4	CERTIFICATE TERM-----	14
3.5	CLASSES OF CERTIFICATES-----	14
4.	<u>CODE OF CONDUCT FOR MARKETERS</u> -----	15
5.	<u>WORKING GROUP</u>	
5.1	INTRODUCTION-----	17
5.2	INDEPENDENT FACILITATORS-----	17
5.3	WORKING GROUP TOPICS-----	18
5.4	REPORTING REQUIREMENTS-----	18
5.5	CONFIDENTIALITY-----	19
6.	<u>LOCAL DISTRIBUTION COMPANY</u>	
6.1	INTRODUCTION-----	20
6.2	SHARED SERVICES-----	20
6.3	AFFILIATES USE OF LDC'S CORPORATE NAME/LOGO-----	20
6.4	JOINT ADVERTISING-----	21
6.5	RIGHT TO DISCONNECT CUSTOMERS-----	21

7. METER READING AND BILLING

7.1	INTRODUCTION -----	22
7.2	PROVISION OF METER READING-----	22
7.3	PROVISION OF BILLING SERVICES -----	22

LIST OF ATTACHMENTS

ATTACHMENT A----- FINAL ISSUES LIST

ATTACHMENT B----- REPORT OF CONSENSUS COMMITTEE ON NATURAL GAS ISSUES
(AND ATTACHMENTS 1, 2 AND 3)

ATTACHMENT C ----- RESPONSE OF THE CONSENSUS COMMITTEE TO PROPOSED
BOARD STAFF QUESTIONS

INTRODUCTION

Commercial production of natural gas from the Sable Island field began in 1999. A transmission pipeline, extending from Nova Scotia to Massachusetts, commenced operation early in 2000. This means that New Brunswickers will now be able to use natural gas as a source of energy.

The Provincial Government conducted a review process to select a company which would be the local distributor. Enbridge Gas New Brunswick Inc. (EGNB) was granted a general franchise in September, 1999.

The Gas Distribution Act, 1999 (the Act), which was proclaimed on March 12, 1999, separates the distribution of natural gas from the sale of natural gas. The local distribution company (LDC) is to install the pipeline system to transport natural gas to consumers. The natural gas itself is to be sold by gas marketers. The Act requires gas marketers to obtain a certificate from the Board before beginning to sell natural gas in New Brunswick.

The Board considered that it would be appropriate to establish the rules that would apply to persons seeking a certificate and to the conduct of gas marketers operating in New Brunswick. As well, rules are required to govern the interaction between the LDC and gas marketers. The Board, in order to

give all interested parties an opportunity to comment, decided to initiate a generic proceeding for this purpose.

The public notice stated that a prehearing conference would be held on August 18, 1999 and contained the following list of issues proposed to be discussed at the hearing.

- The information to be filed by applicants who wish to become gas marketers in New Brunswick.
- The terms and conditions that should apply to persons receiving certificates.
- The rules (code of conduct) that should apply to gas marketers.
- The rules (code of conduct) that should apply to gas distributors governing their relationship to all gas marketers including affiliated companies.
- The information to be provided to the Board by gas marketers and gas distributors.
- The nature of the relationship between gas distributors, gas marketers and their customers.
- The rules regarding disconnection of service to a customer.
- Any other matter relating to gas distributors and/or gas marketers concerning which the Gas Distribution Act, 1999 gives the Board regulatory jurisdiction.

Twenty-nine parties registered for the prehearing conference and were provided with background information prepared by Board staff.

The Board notified parties on July 30, 1999 that the Provincial government had not yet appointed the general franchisee and therefore it was necessary to postpone the prehearing conference to October 20, 1999.

At the prehearing conference, the Board canvassed parties with respect to their experience with a Consensus Committee (Committee) approach in which parties hold meetings in an attempt to resolve issues prior to the public hearing. The comments were that the process can be a very effective one, albeit sometimes lengthy.

The Board decided to use the Committee approach in order to save time and expense. The Board appointed Gail Morrison to be the facilitator and proposed that interested parties become members of the Committee. The Committee was asked to consider issues C, F and G of the Final Issues List (Attachment A).

The Committee began meeting on November 5, 1999 and reported that it seemed likely that issues other than those under headings C, F and G could be resolved by them. The Board agreed that the Committee could address any issues on the list. On December 17, 1999, the Board received and subsequently distributed, to all parties registered in the proceeding, the Report of the Consensus Committee on Natural Gas Issues (the Report). The Report (Attachment B) took the form of responses to the questions on the Final Issues List. The Board found the Committee process to be an extremely worthwhile endeavour and thanks the participants for their time and effort.

The Committee participants recommended that the Board accept the Report in its entirety.

At the hearing, which began on January 10, 2000, the Board stated that it would accept the Report subject to:

- Comments from parties who did not participate in the Committee; and

- Expansion and clarification of certain recommendations with which the Board had concerns.

There were no comments during the hearing regarding the Report by parties who had not participated in the Consensus Committee. With respect to the concerns of the Board, parties were asked to respond to a list of questions, either through a witness panel or in final summation.

Witnesses who had been members of the Committee were reluctant to answer these questions. They stated that to do so would breach the confidentiality of the Committee's discussions. However, they did agree to respond in writing to the questions through the Consensus Committee. The questions and responses are Attachment C of this decision.

The Board considers that the Committee's response to the questions was inadequate. The Board is disappointed by the Committee's unwillingness to provide further input as requested by the Board. The Board emphasizes that if a Committee approach is used in the future, the public interest may require additional input. In that case, the Board will provide sufficient time for Committee participants to prepare evidence in support of their respective positions.

At the beginning of the hearing, the Competition Bureau–Industry Canada made a presentation on Canadian competition law and the interface between it and economic utility regulation. The witnesses who participated on the panel were as follows:

Competition Bureau-Industry Canada:

- Richard Taylor Assistant Deputy Commissioner of Competition
- Mark Ronayne Economist/Energy Interventions Coordinator

- Larry Bryenton Senior Commerce Officer
- Jim Sutton

Other witnesses who participated in the hearing were as follows:

Enbridge Gas New Brunswick Inc. (EGNB):

- Allen J. Maclure Manager, Regulatory Administration
- Dr. William J. Foster Executive Vice President, Foster Associates

Irving Oil Limited:

- Steve Kirstiuk General Manager, Business Development
- Murray A. Newton Manager, Natural Gas Planning

MariCo Oil and Gas Corporation:

- Dennis Holbrook Solicitor, MariCo Oil & Gas Corporation
- Christopher Robinson Vice-President, MariCo Oil & Gas Corporation

On January 12, 2000, the Board heard oral summation.

The Board recognized that prospective natural gas marketers needed to have the Board's decision as soon as possible to facilitate the market start-up. Therefore, the Board delivered an oral decision on January 21, 2000 and adjourned the hearing sine die.

This proceeding was unique in the experience of the Board, particularly the use of the Committee. The Board does not wish to duplicate the efforts of the Committee and therefore considers that it is appropriate to make extensive references to the Report in this decision. The following sections, which present the findings of the Board on specific issues, must be read in conjunction with the Report.

2. INFORMATION REQUIRED BY THE BOARD

2.1 INTRODUCTION

Section 11 of the Gas Distribution and Marketer's Filing Regulation (the Regulation) sets out the information that a party must file with the Board if it wishes to obtain a Gas Marketer's Certificate. However, questions were raised in the Report and by parties during the hearing as to the adequacy of the information requirements in the Regulation.

2.2 APPLICATION FORMS

The Board questioned whether a standardized process using application forms should be used by prospective marketers.

The Board will require all applicants for a marketer's certificate to complete a standard application form and to provide the information described in Section 11 of the Regulation.

2.3 CONFIDENTIALITY

The Board questioned the most appropriate way to handle information considered to be confidential.

The Report requested that the Board amend the Regulation to address the need for certain information to be treated in a confidential manner. It suggested language that the Board could use for this purpose.

The Board will amend the Regulation to permit applicants to request that certain information be treated as confidential.

2.4 POSTING OF SECURITY

The Report expressed concern that the integrity of the New Brunswick gas market could be negatively affected if a certified marketer did not have the necessary resources and infrastructure to satisfy its obligations to the market. The Report suggested amendments that the Board could make to subsection 11(9) of the Regulation. These amendments would allow an Applicant to either post security, as determined by the Board, or provide financial information that satisfies the Board that it may dispense with the necessity for such security.

The Board will amend subsection 11(9) (a) of the Regulation as proposed by the Report. The final wording may be different but the intent will remain the same with one addition. Applicants will be required to file a business plan, which describes their proposed operations in New Brunswick with respect to the sale of natural gas.

2.5 INFORMATION ON SHAREHOLDERS

The Regulation does not require any information with respect to shareholders. The issue was should the Board require such information when assessing the suitability of an applicant for a marketer's

certificate. The concern being that shareholders could dictate policy which could affect the performance of the marketer.

The Board will amend subsection 11(11) of the Regulation to read as follows:

“The application shall contain the following information about each sole proprietor or partner or officer, director and controlling shareholder of a proposed certificate holder:”

2.6 ADDITIONAL INFORMATION

It was noted that although the Regulation prescribes the information that is to be filed with an application for a marketer's certificate, there could be occasions when this information may not be adequate for the Board to discharge its obligation under Section 62 of the Act.

Applicants will be required to respond, in writing, to requests from the Board for any additional information that may be necessary for the Board to fulfil its obligations under Section 62 of the Act.

2.7 SINGLE END USE FRANCHISE APPLICATIONS

It is possible that a single end use franchisee will apply for a marketer's certificate. In order to simplify the process, the Board was asked to consider whether information filed with the franchise application could be used for the marketer's certificate.

The Board will consider that any information actually filed with it in connection with a single end use franchise as having been filed for purposes of applying for a certificate if so requested by the applicant.

2.8 FILING OF RESIDENTIAL GAS CONTRACTS

The Report recommended that the Board should not require marketers to file samples of their residential gas contracts.

The Board will not require marketers to file sample residential contracts.

2.9 CHANGES IN CORPORATE STRUCTURE OF MARKETERS

Changes can occur in the organization and structure of a marketer which could affect its ability to continue to meet its obligations in the marketplace. In order for the Board to monitor such changes the necessary information must be made available.

The Board will require marketers to file, within thirty days, information on any material changes to the corporate structure.

2.10 RELATIONSHIP BETWEEN THE LDC AND ITS MARKETING AFFILIATE

In its review of the rules that should apply to the relationship between the LDC and all marketers, including affiliated companies, the Report recommended that the Board add several new requirements.

With respect to the additional requirements proposed in the Report regarding issue D (1), the Board plans to discuss the specific details with the LDC. The Board proposes that these requirements would then be addressed by way of the rule making powers of the Board.

2.11 INFORMATION ON GAS SUPPLY AND TRANSPORTATION ARRANGEMENTS

Some parties suggested that applicants for a marketer's certificate should be required to file details of their agreements with respect to both gas supply and transportation. Others argued that this could be a deterrent to the entry of a potential marketer and that this information should not be required in the evaluation of an applicant for a certificate.

The Board will not require applicants to file information on their gas supply or transportation arrangements on the Maritimes and Northeast Pipeline system.

2.12 REGULAR REPORTING

The information that marketers should provide to the Board was a matter on the Final Issues List. This was not addressed specifically in the Report or at the hearing.

The Board will require regular reports from all marketers. These reports are necessary for the Board to approve and update an emergency allocation plan, to determine whether or not effective competition exists and to ensure that marketers are complying with the conditions of their certificates. As well, the Board will require information on the gross earnings of each gas marketer to allow it to complete the assessment process described in Section 87 of the Act. The Board proposes that the Working Group, which is discussed in detail later, provide recommendations to the Board as to the specific information that should be filed and as to the timing of such reports.

Compliance with the reporting requirements will be a condition of any certificate issued by the Board.

3. PROCESSING / REVIEW OF APPLICATIONS

3.1 INTRODUCTION

The Report recommended that only reliable and reputable marketers should be allowed to sell natural gas in New Brunswick. It also noted that the terms and conditions for entry should not be so onerous as to prevent the entry of reputable new marketers. The Report suggests a balance should be achieved between these two objectives which would be consistent with light-handed regulation.

3.2 PUBLIC NOTICE OF MARKETERS' APPLICATIONS

The question was raised whether there should be a public notice of all applications for a gas marketer's certificate so that the public could offer comment.

The Board will not require public notification with respect to applications for a gas marketer's certificate.

3.3 BUSINESS AND FINANCIAL REVIEW

The suggestion was made that the Board should require all marketers to post security in an amount based on the level of business that the marketer expects to do in New Brunswick. Some parties suggested that the security should be used to protect all other market participants in the event that a marketer failed to meet its obligations.

The Board will review the business plan and financial information provided by an applicant. The necessity for a security arrangement and its amount will be determined on a case-by-case basis.

3.4 CERTIFICATE

The Report recommended that marketer's certificates should be issued for an indefinite period, since any specific term could interfere with the ability of marketers to enter into long term contracts for transportation or gas supply.

The Board will issue certificates with no specific term.

3.5 CLASSES OF CERTIFICATES

Some parties suggested that the Board should consider issuing different classes of certificates since there are significant differences involved in the definition of "customer services". The Report recommended that any differences be accommodated through the terms and conditions attached to each certificate issued by the Board.

The Board will not issue different classes of certificates. Certificates will have terms and conditions that are appropriate for each applicant.

4. CODE OF CONDUCT FOR MARKETERS

The Report included a proposed Code of Conduct for Gas Marketers selling to low volume consumers. The Board notes that the Committee did not have a member that would specifically represent the low volume consumer. Therefore, the Board has reviewed the provisions in other jurisdictions with respect to low volume consumers and considers that the following is necessary to provide an appropriate level of consumer protection.

All contracts with low volume customers must include the name, address and telephone number of the Board and a statement that customers have a right to contact the Board. This information is to be included in a standard disclaimer statement, which will be provided by the Board.

Subsection 2.5.1 of the proposed Code of Conduct is changed to add the words "of gas per cubic meter" after the word "price".

Subsection 2.6.1 is changed to add at the end the words "and the contract shall contain the price of gas per cubic meter".

All contracts with low volume customers must include a "standard terms of offer" section, to be approved by the Board. The Board requests that the Working Group recommend the appropriate wording for a "standard terms of offer".

Subject to the above, the Board accepts the Code of Conduct for Gas Marketers selling to low volume customers as proposed by the Report. The Board will prepare an amended Code of Conduct, which it will make a rule pursuant to Section 66 of the Act. Until that time, adherence to the Code will be a condition of any certificate issued by the Board.

The Board wishes to minimize the costs associated with the introduction of natural gas in New Brunswick. Therefore a third party agent will not be used to resolve customer complaints at this time.

5. WORKING GROUP

5.1 INTRODUCTION

The Board considers that the Committee has performed a very useful function. A number of issues which would have taken many hours of public hearing time were satisfactorily resolved by the Committee. This has produced a considerable cost saving to the interested parties and the public. Furthermore, parties have shown a willingness to consider other points of view and a sincere desire to assist in the development of a natural gas industry in New Brunswick. The Report recommended the creation of an ongoing Working Group to consider mutual solutions to issues remaining from the Final Issues List. The Report suggested that the Working Group could be used to resolve other issues that might be referred to it by the Board. For these reasons, the Board considers that the concept of a Working Group is worthwhile.

The Board considers that any party with a legitimate interest should be able to participate in the Working Group.

5.2 INDEPENDENT FACILITATORS

The Board finds that independent facilitators will provide valuable assistance. The Board believes that a facilitator should only attend meetings of the Working Group only when absolutely necessary. The Working Group is encouraged to organize its discussions so that certain meetings will not require the services of a facilitator.

Board staff will only attend meetings when requested by the Working Group and then only to provide information on Board process and procedure. The Board considers that this approach will allow participants to discuss matters more openly.

5.3 WORKING GROUP TOPICS

The following items are referred to the Working Group:

- Protocols and timing for the exchange of and access to all types of information between the marketers and the distribution company,
- Load balancing and other operational issues, and
- Customer / Marketers / Distributor relationships.

Other items may be assigned to the Working Group at a later date.

The Board requests the Working Group to develop wording for a "standard terms of offer" and submit this to the Board. The Board believes that there are further decisions which must be made in order to permit a proper start-up for the natural gas market. The Working Group is to identify these specific items and recommend to the Board the date when a decision is necessary. The Board requests the Working Group to submit this information as soon as possible.

5.4 REPORTING REQUIREMENTS

The Working Group is to report to the Board on a regular basis on the results of its deliberations and to obtain Board approval of items upon which a consensus has been reached.

5.5 CONFIDENTIALITY

The Board believes that Working Group meetings should be conducted on a non-confidential basis whenever possible. However, if the Working Group considers it necessary to hold certain meetings on a confidential basis, the Board reserves the right to submit questions in writing to the Working Group on any matters upon which consensus has been reached. As well, the Board may require a public hearing, either written or oral for certain matters. In that case, the Board will provide sufficient time for Working Group participants to prepare evidence in support of their respective positions.

6. LOCAL DISTRIBUTION COMPANY (LDC)

6.1 INTRODUCTION

One of the Issues was what rules should apply to the LDC governing their relationship to all gas marketers including affiliated companies.

6.2 SHARED SERVICES

All parties agreed that the LDC should be allowed to use shared services with an affiliate if the sharing results in savings in the LDC's operating budget. The Report recommended that the LDC fully disclose the terms and conditions upon which the sharing takes place. The cost consequences of any sharing would be dealt with in a rates application.

The Board agrees with the recommendations of the Report. The Board will require the distribution company to provide full disclosure of all terms and conditions regarding any sharing of services with an affiliate which holds a gas marketer's certificate.

6.3 AFFILIATES USE OF LDC'S CORPORATE NAME/LOGO

The Report states that subsection 69(r) of the Act adequately addresses the use of the LDC name by an affiliate. However, no consensus was reached regarding the use of the logo. Evidence was

presented that other jurisdictions had allowed affiliates of the LDC to use a material part of the corporate name and/or logo. Certain jurisdictions require the use of an appropriate disclaimer.

The Board has reviewed the requirements in other jurisdictions and as a result of this review will permit a gas marketer, which is an affiliate of the distribution company, to use a material part of the name of the distribution company and/or to use the same logo. The affiliate is to review the use of disclaimers in other jurisdictions and to recommend an appropriate disclaimer for approval by the Board. Directions on the wording and use of the disclaimer will then be provided by the Board.

6.4 JOINT ADVERTISING

The Committee agreed that joint advertising with the affiliate by the distributor should be permitted if the same opportunity is presented to all other marketers as well.

The Board agrees with the conclusions of the Committee and will permit joint advertising by the distribution company and its affiliate provided the same opportunity to participate is given to all other gas marketers on equal terms and conditions.

6.5 RIGHT TO DISCONNECT CUSTOMERS

The Committee agreed that only the distribution company should have the right to disconnect a customer.

The Board agrees that only the distribution company will be permitted to disconnect a customer. The Board requests the distribution company to develop a proposal regarding customer disconnections and to file this proposal with the Board for its consideration.

7. METER READING AND BILLING

7.1 INTRODUCTION

Another issue was the nature of the relationship between gas distributors, gas marketers, and their customers.

7.2 PROVISION OF METER READING

The Report did not provide a recommendation on who should be responsible for meter reading services. Some parties argued that this should be the responsibility of the LDC in order to permit timely information flow, thereby enabling the efficient management of gas supply arrangements. Others felt that this restriction was not necessary.

The Board wishes to ensure a safe and efficient natural gas industry in New Brunswick. The Board believes that the LDC should have the responsibility for reading meters and for providing the appropriate information to interested parties.

7.3 PROVISION OF BILLING SERVICES

The Report did not provide a recommendation on who should provide billing services. Argument was presented that the billing process allows the LDC to provide additional information to gas customers on issues such as safety, gas utilization, rate and regulatory information. It was proposed that the LDC would

set up an Agent, Billing and Collection service for marketers. Another position was presented that the customer be allowed to choose by whom they would be billed.

The Board finds that the LDC should bill for its services and for those marketers who request it to do so. The rate for this service will be subject to the approval of the Board. Marketers who wish to bill for their own services may do so.

DATED AT THE CITY OF SAINT JOHN, NB this ____ day of _____, 2000.

David C. Nicholson, Chairman

J. Bateman, Vice-Chairman

J. Dumont, Commissioner

L. Larocque, Commissioner

E. LeBreton, Commissioner

R. Richardson, Commissioner

M. Zauhar, Commissioner

ATTACHMENT A

FINAL ISSUES LIST

FINAL ISSUES LIST

A. Information to be filed by applicants who wish to become gas marketers in New Brunswick:

1. What specific information should be provided to identify the applicant, its relevant experience, its financial situation, its performance history and that of key personnel, the types of services and/or products which it plans to offer?
2. Should applicants intending to market to low-volume residential customers provide a sample residential contract?
3. What methods should be used to protect customers against failure of a marketer to meet its contractual commitments?
4. What information should be provided on gas supply and transportation arrangements?

B. Terms and conditions that should apply to persons receiving a marketer's certificates:

1. What should be the process required to receive a certificate?
2. What is the appropriate term for a certificate?
3. Should there be different classes of certificates and if so, what types should there be?
4. Under what conditions would a certificate be revoked or suspended?
5. What happens to a marketer's customers if a certificate is revoked or suspended?
6. What is the renewal process?
7. How should a license fee be designed?
8. Should certain information be treated as confidential and if so, what information and how should it be handled?

C. Rules (code of conduct) that should apply to gas marketers:

1. What requirements are necessary with respect to:
 - a) Fair Marketing Practices - i.e. the actions of marketers in making offers to consumers?
 - b) Identification of salespeople both in person and over the telephone?
 - c) Confidentiality of consumer information?
 - d) Conditions in offers -- price, time period, terms of payment and other terms such as deposits, late charges, billing frequency?
 - e) Contracts - length of contracts, what is the appropriate "cooling off" period?
 - f) Contract renewals?
 - g) Assignment, sale and transfer of contracts?
 - h) Independent arms-length consumer complaints resolution process?
 - i) Breach of contract - financial penalties? Loss of certificate?
 - j) Compensation to customers for failure to supply gas?
2. Should adherence to a code of conduct be part of the terms/conditions of a certificate?

D. Rules (code of conduct) that should apply to gas distributors governing their relationship to all gas marketers including affiliated companies:

1. What separation between the marketing affiliate and the distributor is required?
2. To the extent that there is a sharing of services/resources between the distributor and its affiliate(s), should a Service Agreement govern these matters and what should be included in

- this agreement - i.e. pricing mechanisms, cost allocation, confidentiality? What affiliate transactions should be allowed, if any, without prior Board approval - i.e. dollar amount of the transaction?
3. If there is a marketing affiliate, should it be allowed to have a name similar to its distributor? Can the distributor and the affiliate participate in joint advertising?
 4. What is the complaint process? Penalties for non-compliance?

E. Information to be provided to the Board by gas marketers and gas distributors:

1. What information should marketers and distributors provide to the Board so that the Board can determine that consumers are adequately protected and that there is a level playing field between the distributor and all gas marketers, including the distributor's marketing affiliate?
2. What information will the Board require marketers and distributors to maintain to ensure compliance with the regulations/codes and under what circumstances will that information be reported to the Board?
3. What information should be provided on changes in corporate structure and when?

F. Nature of the relationship between gas distributors, gas marketers and their customers:

1. In the current greenfield environment, and specifically, in the upcoming months, how should information be coordinated between the distributor and all marketers regarding the rollout of pipe and the offering of gas to ensure effective development of a natural gas industry in NB?
2. What types of information should be exchanged by marketers and the distributor and what are the protocols in place regarding the access to and the use of such information?
3. What type of information should be presented to the public? How? By whom? How to finance this activity?
4. How will load balancing be provided?
5. What constitutes customer service?
6. How exactly should customer service be initiated?
7. How will customers change marketers?
8. What is the marketer's obligation to serve customers and what is the procedure leading to the invoking of the "supplier of last resort" clause by the distributor?
9. Under what circumstances would a marketer have the right to discontinue supply (as opposed to disconnecting a customer)? In other words, under what circumstances could a customer seek another supplier?

G. Rules regarding disconnection of service to a customer:

1. How should disconnection for non-payment of accounts be handled? i.e. Should the marketer have shut-off rights at the meter (which is owned by the distributor)?
2. Under what circumstances should disconnection not be permitted? i.e. should there be mandatory service periods for such circumstances as "winter gas", social and health considerations? If there is mandatory service, then what is the mechanism to fund this service?
3. What are the procedures for disconnection?

ATTACHMENT B

REPORT OF CONSENSUS COMMITTEE ON NATURAL GAS ISSUES

**Before
The Board of Commissioners of Public Utilities
of New Brunswick**

*IN THE MATTER OF A Board Hearing to Consider Rules and
Regulations Regarding the Conduct of Natural Gas Distributors
and Marketers in the Province of New Brunswick*

**Report of the Consensus
Committee on Natural Gas Issues**

December 16, 1999

Report of Consensus Committee on Natural Gas Issues

Introduction

This report sets out the views of the Consensus Committee on Natural Gas Issues (the “**Committee**”). The Committee was formed by the New Brunswick Board of Commissioners of Public Utilities (the “**Board**”) to provide a forum for discussion of the issues before the Board in its generic hearing to consider rules and regulations regarding the conduct of natural gas distributors and marketers in the Province of New Brunswick. A pre-hearing conference was held by the Board on October 20, 1999, and a preliminary issues list was issued on October 21, 1999. Parties were asked by the Board whether they would be interested in participating in the Committee to attempt to resolve some of the issues prior to the commencement of the formal hearing. The Board asked that the Committee produce its report by December 17, 1999.

Those who indicated an interest and who were provided with an opportunity to comment at each stage of the Committee discussions were:

- Enbridge Gas New Brunswick Inc. (“**distributor**”)
- Direct Energy Marketing
- Engage Energy Canada, L.P.
- Galdon Trading Ltd.
- Irving Oil Limited
- Maritimes NRG (New Brunswick) Limited
- Maritimes and Northeast Pipeline
- New Brunswick Department of Natural Resources & Energy
- Neill and Gunter Limited
- New Brunswick Power Corporation
- Saint John Energy
- EnergySource Canada (Sempra Energy Sales)
- Union of New Brunswick Indians

Maritimes NRG (New Brunswick) Limited withdrew from the proceeding on November 29, 1999. Maritimes and Northeast Pipeline and the Union of New Brunswick Indians indicated that they would only monitor the Committee’s deliberations.

Gail Morrison was appointed by the Board to serve as facilitator for the Committee’s process.

Committee Process

The Committee met for ten days, eight in Saint John and two in Fredericton, between November 5 and December 16, 1999. Participants who could not attend in person could participate by conference call, and the facilitator provided summaries of each meeting to all participants. All participants agreed that the discussions of the Committee would be confidential.

The report of the Committee is a consensus report, and has been agreed to by those whose names appear at the conclusion of the report. Given the nature of a consensus, participants have made compromises in one portion of the discussion to obtain concessions in others. **The report (including its Attachments) must be viewed in its entirety as representing the consensus view. The Committee respectfully requests that the Board recognize this characteristic of the report, and that the report will be accepted in its entirety as constructive assistance to the Board in its deliberations.** If individual issues upon which the Committee has reached consensus in this report are to be debated before the Board, Committee participants will require sufficient time to prepare evidence in support of their respective positions that would have otherwise been reflected in this report.

At the first meeting of the Committee, concerns were expressed about whether there were other parties who might be affected by the issues being discussed in the Committee but who had not been given notice of the process. As well, the Committee requested additional information from the Board about the way in which the Committee's report would be treated in the subsequent Board process, and the relationship between the Committee process and other Board processes, such as rule-making. At a later meeting, a representative of the Board attended the Committee meeting and answered a number of these questions. The Board advised the Committee that adequate notice of the proceedings had been given, and that any agreements reached would be given very serious consideration by the Board.

As noted in other parts of this report, the participants in the Committee had widely divergent interests, but did not include a participant whose only mandate was to represent the gas consumer, particularly the low volume consumer. Participants were, however, mindful of the need to provide a level of consumer protection, and many aspects of the report reflect this awareness.

The discussions leading up to this report were wide-ranging and informative. The development of a natural gas market in a "greenfield" situation presents challenges and opportunities that have little precedent in gas markets that have emerged from monopolies providing fully bundled gas service. The participants have worked to find resolutions to issues that reach an appropriate balance

Report of Consensus Committee on Natural Gas Issues

between the need for regulatory oversight, and the desire to encourage participation in the market. The Committee was aware of the movement in the past few years towards light-handed regulation of the energy industry, and of the unique opportunity in New Brunswick to implement an innovative regulatory model that encourages competition.

A number of issues which would have taken many hours of hearing time have been satisfactorily resolved among the Committee's participants. Where issues have not been completely resolved, members of the Committee have given serious thought to alternative solutions and explored innovative options. Many of the participants are new to the natural gas industry; these participants appreciated the opportunity to learn more about the operational and technical aspects of the industry. Committee participants with industry experience benefited, in turn, from the fresh approach these participants brought to the discussions. Some of the resolutions reached by the Committee, such as the proposed Code of Conduct for Marketers, have required many weeks of debate in other jurisdictions and much expensive hearing time for their development. Willingness to consider other points of view and a sincere desire on the part of all participants to assist the development of the industry in this province have resulted not only in time and cost savings, but in constructive suggestions for future cooperative approaches to the difficult issues still to be resolved.

The report takes the form of responses to the questions in the Final Issues List provided by the Board on December 3, 1999. In two instances, the Committee's discussion resulted in draft documents for the Board's consideration. The Final Issues List is appended as **Attachment 1**. The Board had initially indicated that the Committee should try to resolve issues under headings C, F and G on the issues list. Once the Committee began its discussions, it seemed likely that other issues might be amenable to resolution, and the Board agreed that the Committee should address any issues on the list. In the result, the Committee has provided a consensus view on all except one of the issues under sections A, B, C and E of the Board's Final Issues List, and has agreed on a number of the issues under sections D, F and G.

Many of the technical issues associated with the distribution and marketing of natural gas in New Brunswick have not yet been solved, or even completely delineated. As noted below, participants support the creation of an ongoing working group to consider mutual solutions to some of these issues, and to resolve other issues that might be referred to the working group by the Board.

Committee Comments On Final Issues List

A. Information to be filed by applicants who wish to become gas marketers in New Brunswick:

General Comment:

The Committee notes that section 1 of the *Gas Distribution Act*, 1999 (the “**Act**”) defines “gas marketer” in such a way that, when read with the definition of “customer service” in the same section, it appears to require certification of services (such as appliance repair) that may have no clear connection with the actual merchant function of selling natural gas. The Committee believes that certification is not necessary for those who do not intend to market the natural gas commodity, and it recommends the amendment of the definition of “gas marketer” to clarify the limits of a marketing certificate’s application. Until such amendment can be made, different classes of certificates may be necessary (see B3 below). In its discussions, the Committee has considered only the requirements relating to marketers of the natural gas commodity.

Specific Issues:

1. *What specific information should be provided to identify the applicant, its relevant experience, its financial situation, its performance history and that of key personnel, the types of services and/or products which it plans to offer?*

The Committee reviewed section 11 of the Board’s *Gas Distribution and Marketers’ Filing Regulation* under the Act (the “**Regulation**”), and notes that basic application filing requirements are addressed in subsections 11(2) to (8), 11(10) and 11(11) of the Regulation. However, the Committee is concerned that the integrity of New Brunswick’s new gas market may be negatively affected if a certified marketer does not have the necessary resources and infrastructure to satisfy its obligations to the market. The Committee therefore suggests that the Board amend subsection 11(9) of the Regulation to include terms and conditions that would assure the Board that a marketer has the requisite resources to meet its obligations. **Attachment 2** to this report provides suggested language which would address this concern, and provides the Board with sufficient flexibility to address the different financial circumstances of marketers, by requiring the posting of security except where the Board otherwise determined that such security was not necessary.

Attachment 2 also includes the Committee’s proposal to address the need for certain information being filed with the Board to be treated in a confidential manner. While paragraph 96(1)(n) of the Act provides the Board with this regulation-making power, the Regulation is currently silent on this issue.

Report of Consensus Committee on Natural Gas Issues

The Committee does not believe that it is necessary to submit information concerning other types of services that marketers and potential marketers currently offer or are planning to offer. Such information may change rapidly, is of a confidential nature and is not seen to be of assistance to the Board in its regulatory role.

2. *Should applicants intending to market to low-volume residential customers provide a sample residential contract?*

No. The Committee believes that no purpose would be served by filing sample contracts. The actual contract with a particular consumer would be the document relied on in any dispute or complaint, and there are requirements in the proposed Code of Conduct for Gas Marketers to retain contract copies on file, and to disclose the details of the contract (section 2.5 of the Code). The Committee also notes that if the Board requires the filing of sample contracts, this could be viewed as accepting or approving the contracts - which could prove problematic if the Board is required to arbitrate a future contractual dispute.

3. *What methods should be used to protect customers against failure of a marketer to meet its contractual commitments?*

The proposed Code of Conduct for Gas Marketers requires marketers to try to resolve the consumer's complaint and, failing this, to inform consumers of a further complaint process. It also describes the consequences of breach of the Code. It is the Committee's view that the Board's power to revoke or suspend a marketer's certificate for breach of the Code would be clarified by making the Code a rule of the Board pursuant to section 67 of the Act. The Committee also notes that the powers of the Board under section 62 of the Act are sufficiently broad to encompass revocation of a certificate for serious breaches of the Code.

However, the revocation of a marketer's certificate only provides marketers with an incentive to act with integrity. It does not protect the customer against a contractual default. The customer's primary resort against the marketer is to a claim in court for breach of contract. For low volume, or core market, consumers (defined in the Act and the Code as persons who consume no more than fifty thousand cubic metres of gas per year), the complaints mechanism may provide a more practical remedy. To avert business failures of marketers resulting in substantial financial losses, the proposals outlined above under A1 and in **Attachment 2**, relating to the provision of security, will provide some assistance.

In the absence of another willing marketer, the failure of a marketer to actually supply gas to its customers can only be dealt with in provisions relating to supplier of last resort.

Report of Consensus Committee on Natural Gas Issues

4. *What information should be provided on gas supply and transportation arrangements?*

No consensus was reached on this issue.

B. Terms and conditions that should apply to persons receiving a marketer's certificates:

General Comments:

As noted above, the Committee is concerned that only reliable and reputable marketers be allowed to participate in New Brunswick's new gas market. However, the Committee is also aware that terms and conditions that are too onerous could prevent the entry of reputable new market entrants. The balance between these concerns should underlie the rationale for the terms and conditions in each certificate - in a manner that is consistent with light-handed regulation.

Specific Issues:

1. *What should be the process required to receive a certificate?*

A standard application form should be developed by the Board that reflects the requirements of section 11 of the Regulation. The form should include information as to number of copies required, the fee, the standard format of bonding or letter of credit requirements, and the time frame within which a certificate would be granted. A standard form of certificate should also be developed, subject to the Committee's comments on certificate terms and conditions in B3 below. The process should be streamlined in a manner that is consistent with the concept of the Act, which contains a rebuttable presumption that a certificate will be issued (section 62). To ensure that the certification process is expeditious, it may be necessary for the Board to seek an amendment to subsection 61(1) of the Act to allow delegation of the Board's power, and avoid the necessity of a Board quorum for the purpose of issuing certificates.

2. *What is the appropriate term for a certificate?*

There should be no fixed term for a certificate. A limited term certificate would be inconsistent with the need for marketers to enter into contracts with suppliers and customers – contracts that may be as long as ten or fifteen years. The Board could, as a condition of granting a certificate, require the filing of updated information from time to time. As well, conditions of general application might be changed from time to time, and the certificates should provide that such changes would apply to current certificate holders, as long as existing contracts were respected.

Report of Consensus Committee on Natural Gas Issues

3. *Should there be different classes of certificates and if so, what types should there be?*

As noted in its comments under A1 above, the Committee believes that certification is not necessary for those who do not intend to actually market the natural gas commodity. The Committee has addressed in its discussions only the certification necessary for actual commodity marketers. The Committee suggests that terms and conditions in certificates could provide for any differences necessary for different types of marketers. The Code of Conduct does not apply to marketers who sell only to large volume customers, which effectively creates a different class of certificate. Using terms and conditions as a mechanism to distinguish among various types of marketers gives the Board more flexibility than would be possible through a few different classes of certificate.

It may also not be appropriate that some gas users who would technically fall under the definition of “gas marketers” (such as large volume users or single end user franchisees who wish to sell excess gas) be subject to all of the requirements which apply to other types of marketers. A simplified certification process may be appropriate for these users, with the resulting certificates containing conditions limiting these users to selling excess gas for resale.

4. *Under what conditions would a certificate be revoked or suspended?*

The Act and the Regulations contain conditions under which a certificate can be revoked or suspended. In addition, the Board’s rules (including the Code of Conduct for Gas Marketers referred to in C below, if the Board accepts this report) and the certificate itself may contain these and other conditions.

5. *What happens to a marketer's customers if a certificate is revoked or suspended?*

It is important that customers of a marketer continue to be served. It may be necessary to provide an interim certificate for the marketer to allow existing customers to be served, while forbidding any further marketing activity. If the market is well-developed, one would expect that contracts with customers of a marketer could be sold to another marketer at a price reflecting their value. If it is not possible to find another supplier, and the current marketer cannot continue to supply, customers would be shifted to the supplier of last resort. The Committee expects that this question would also be specifically dealt with at the defaulting marketer’s revocation hearing (assuming one was held).

Report of Consensus Committee on Natural Gas Issues

6. *What is the renewal process?*

No renewal is necessary if there is no fixed term of a certificate.

7. *How should a license fee be designed?*

A one-time flat fee for a certificate should be set at a level that does not present a barrier to entry to potential market participants. An amount of \$500.00 seems reasonable. There might also be a reasonable administrative fee to process updating information. If the certificate applies to marketers other than those who market the gas commodity, such as gas appliance repair providers, different fees may be needed for them.

8. *Should certain information be treated as confidential and if so, what information and how should it be handled?*

In general, information filed to obtain a certificate under section 11 of the Regulation would be public information; much of it, in any case, would be obtainable from other public sources. If there were information (such as financial information of a privately-held company) that a party wished to file on a confidential basis, the Board in its discretion could determine that it should be confidential. This approach is consistent with the Committee's comments in A1 above. Suggested amendments to the Regulation are set out in **Attachment 2**.

The Board should maintain a publicly available list of currently certified marketers, and should provide this list to the distributor. The distributor should also be told if a marketer's certificate is revoked or suspended.

C. *Rules (code of conduct) that should apply to gas marketers:*

The Committee submits a proposed **Code of Conduct for Gas Marketers** attached as **Attachment 3**, which would govern marketers selling to low volume consumers. The Code attempts to balance the interests of potential gas marketers and the distributor, while maintaining the essential consumer protection purpose of such a document. The Committee included participants with widely divergent interests, necessitating compromises on several portions of the Code to arrive at a consensus on all of its terms.

While the Committee used the Ontario Code as one of the bases for its discussions, it notes the very different characteristics of a market developing in a "greenfield" situation and those prevailing in a jurisdiction moving from a bundled, monopoly situation to an unbundled competitive market. A number of the provisions of the Ontario Code that address problems unique to the Ontario market are not foreseen to be needed in New Brunswick and have been omitted.

Report of Consensus Committee on Natural Gas Issues

The Committee recommends that the Board make the Code a “rule” under section 66 of the Act. Not only would this make enforcement of the Code easier (as breach of the Code would be breach of a rule – leading to possible revocation of a Certificate), but it would ensure that any changes to the Code were made in accordance with the procedure set out in section 67 of the Act for rulemaking, giving interested parties appropriate notice and rights of participation.

D. Rules (code of conduct) that should apply to gas distributors governing their relationship to all gas marketers including affiliated companies:

1. *What separation between the marketing affiliate and the distributor is required?*

The Committee agreed that section 69 of the Act provides a basic “code of conduct” regarding the separation of the distributor and any marketing affiliate operating in this market. No merit was seen in repeating those provisions in a formal code, but the Committee recommends that the Board, through an order or decision, add the requirements set out below.

- a) The distributor shall provide those of its employees who are likely to have direct contact with a marketing affiliate a clear description of the requirements of s. 69, and will require those employees to attend meetings addressing compliance with the section and other provisions concerning affiliate relations. The distributor shall provide to the Board and all marketers under subsection 69(o) the information that it provides to its employees in this respect and with respect to any additional requirements of the Board. The distributor shall keep a log of those employees who have received the information and attended meetings addressing compliance with it. The distributor shall be responsible for ensuring its employees’ compliance with the section, and will monitor its employees for this purpose.
- b) Information to be provided by the distributor in compliance with subsection 69(l) shall be provided to all marketers contemporaneously.
- c) The distributor will not give preferential treatment of any kind to any marketer.
- d) The distributor shall maintain updated records in a form and manner as prescribed by the Board so as to be able to demonstrate compliance with the requirements of s. 69 and the additional

Report of Consensus Committee on Natural Gas Issues

provisions set out by the Board. In particular, the distributor must keep a log of all transactions for value with its marketing affiliate.

- 2. To the extent that there is a sharing of services/resources between the distributor and its affiliate(s), should a Service Agreement govern these matters and what should be included in this agreement - i.e. pricing mechanisms, cost allocation, confidentiality?*

If the distributor shares services with an affiliate, it must fully disclose the terms and conditions upon which the sharing takes place. The cost consequences of shared services will be dealt with in the distributor's rates application.

What affiliate transactions should be allowed, if any, without prior Board approval - i.e. dollar amount of the transaction?

The Committee relies on full disclosure as set out above to dispense with the necessity of Board approval.

- 3. If there is a marketing affiliate, should it be allowed to have a name similar to its distributor? Can the distributor and the affiliate participate in joint advertising?*

Paragraph 69(r) of the Act provides a satisfactory answer to the first question. Joint advertising with the affiliate should be permitted if the same opportunity is presented to all other marketers as well. No consensus was reached by the Committee as to whether this paragraph of the Act was broad enough to cover logos.

- 4. What is the complaint process? Penalties for non-compliance?*

Complaints by marketers about the distributor's affiliate relationships that are submitted in writing to the distributor must be reported to the Board under paragraph 69(q) of the Act. The information the distributor is required to maintain by s. 69, and proposed additional provisions, could be requested by the Board in its review of a complaint. Penalties are adequately addressed by section 97 of the Act.

E. Information to be provided to the Board by gas marketers and gas distributors:

- 1. What information should marketers and distributors provide to the Board so that the Board can determine that consumers are adequately protected and that there is a level playing field between*

Report of Consensus Committee on Natural Gas Issues

the distributor and all gas marketers, including the distributor's marketing affiliate?

The information required by s. 69 and proposed additional provisions would be adequate to assess whether the business relationship between the distributor and its affiliate is appropriate. Scrutiny in the distributor's rates hearing will protect consumers from the inclusion in rates of unfair costs arising out of affiliate transactions.

Consumer complaints to the distributor should be dealt with in the same manner as is required of marketers in the marketers' Code of Conduct. The distributor should attempt to resolve them, but should provide complainants who are not satisfied with information about how to contact the Board. The distributor must keep a log of complaints and responses, and make it available to the Board on request.

- 2. What information will the Board require marketers and distributors to maintain to ensure compliance with the regulations/codes and under what circumstances will that information be reported to the Board?*

Please refer to the Committee's comments under D and E1 above. The Committee also notes that the information required to be maintained by marketers under their Code of Conduct could be requested by the Board when it is investigating a complaint.

- 3. What information should be provided on changes in corporate structure and when?*

It is the Committee's view that the term "corporate structure" in this question must mean information filed upon application. Marketers should file any material changes in the information filed with the Board on its application within 30 days of the change.

F. Nature of the relationship between gas distributors, gas marketers and their customers:

- 1. In the current greenfield environment, and specifically, in the upcoming months, how should information be coordinated between the distributor and all marketers regarding the rollout of pipe and the offering of gas to ensure effective development of a natural gas industry in NB?*

The Committee had extensive discussion on the exchange of information between the distributor and marketers, and the most effective way to respond to

Report of Consensus Committee on Natural Gas Issues

those who wish to obtain natural gas service so that the market develops as quickly and efficiently as possible. All participants in the Committee share a strong interest in encouraging market development. It is the Committee's understanding that information from the distributor should be made available to relevant marketers in a timely fashion and contemporaneously, so that all may contribute to advancing that interest. One result of the wide-ranging discussion was the recognition that it is impossible at this stage to anticipate all of the steps which will need to be taken to build and expand the market. The Committee therefore proposes that an ongoing working group of marketers and the distributor be struck to discuss market strategies, and resolve problems as they arise. The Committee is confident that many of the problems can be resolved without the necessity of Board intervention, but it is cognizant that a failure to resolve a problem could require Board involvement.

2. *What types of information should be exchanged by marketers and the distributor and what are the protocols in place regarding the access to and the use of such information?*

There are many types of information which must be exchanged, and different needs as to frequency and timeliness of the various types. The protocols and timing for exchange of and access to all types of information will need to be developed as part of the discussion of market strategies by the ongoing working group suggested in F1 above. Some types of information have been detailed in responses to earlier issues, such as those under D above. The distributor will require commitments from customers, through their marketers, that they will actually begin natural gas consumption within six months of hook-up. The distributor also requires information from marketers on the geographic areas in which they intend to be active, and the types of customers they will be seeking. Those potential customers who express an interest in service must be provided with contact information on marketers, and they will also require access to appliance providers and repairers, and other types of service. Marketers need information on construction/roll-out plans, estimated in-service dates, and costs of distribution service in order to provide accurate market information to potential customers.

3. *What type of information should be presented to the public? How? By whom? How to finance this activity?*

The Committee recognizes that public education is crucial to the success of the new natural gas market in New Brunswick. The objective of the education program is to educate the public about the safety and advantages of natural gas, and to create an understanding of the structure of the industry and the identity and role of the distributor and other market players. In short, the aim is to attract users to the market. The Board, in its role as regulator, is in a unique position to provide public education as part of its processes. It is anticipated that the Board

Report of Consensus Committee on Natural Gas Issues

will maximize its opportunities to educate the public as it publicizes its regulatory processes.

Recognizing that marketers and the distributor will both benefit from the public education initiative, participants in the Committee are prepared to play an important role with respect to this initiative, and will in any case bear substantial promotional and educational costs in the course of their participation in the market. The Committee notes, however, that at least in the early years there will be relatively few gas consumers and that a strong natural gas market in the province will benefit the province as a whole. Therefore, the Committee believes that the provincial government should play a role, in consultation with the industry, in providing the public with information on the structure of the industry and the benefits of natural gas, and in encouraging rapid development of the industry.

It is possible that organizations such as the Canadian Gas Association have developed information initiatives that could be adapted for use in this province. It is also possible that shared programs with Nova Scotia could be effective. The Committee recommends that the Board investigate these possibilities as part of its initiatives to inform the public as the market develops.

4. *How will load balancing be provided?*

Many of the technical details of the gas distribution system have not yet been finalized. The Committee recognizes that load balancing and other operational issues cannot be resolved at the marketers' hearing. The distributor agrees to hold workshops to discuss load balancing and other operational issues prior to any determination made by the Board at a later hearing. Participants may make comments on load balancing at the marketers' hearing.

5. *What constitutes customer service?*

Customer service is defined in section 1 of the Act. The Committee has already commented in A above on the use of this definition in characterizing a "gas marketer" as defined in the Act, and the difficulties it may cause for the certification process. The Committee discussed the components of customer service at length, and reached consensus that one component, yardline maintenance, may best be provided by the distributor, given that the distributor will own these lines. The Committee also agreed that the distributor would not provide appliance service. There was no consensus on other aspects of customer services.

6. *How exactly should customer service be initiated?*

It is essential that the distributor and marketers co-operate to ensure that those who wish to become customers are provided with timely and accurate

Report of Consensus Committee on Natural Gas Issues

information, but are neither deluged by contacts which might confuse them and discourage their participation, nor allowed to languish when they need assistance. The distributor has agreed that it will provide timely information to all marketers as to the location and timing of potential distribution service. The distributor would provide potential customers with contact information for all marketers active in that geographical area. Either the distributor or the marketer would need to furnish customers with the names of providers of other services.

7. *How will customers change marketers?*

Where the supply contract has not expired, the customer would be expected to notify his or her current marketer that the customer wishes to change to another marketer; and the current marketer would notify the distributor that it no longer would be supplying gas for this customer. The new marketer would notify the distributor that it was now supplying gas to this customer, and the change would be effected. This seemingly simple description, however, does not provide details of the timing of the changes, or describe what would happen if the customer signed a second contract without making the second marketer aware that an earlier contract existed. While the distributor could provide that information to the second marketer, the Committee recognizes the difficulties inherent in making the distributor the entity that polices the terms and conditions of marketing contracts, or that makes the choice of a marketer on the customer's behalf. However, the distributor could play a valuable and necessary role in notifying the affected parties that a change is occurring.

The general question raised is: "Who is the customer of the distributor?" Is it the end user, or is it the marketer who supplies the end user? The answer to this question affects not only the way in which customers change marketers, but also how distribution charges are passed through to end use customers, and the ultimate rights of end users. The processes described above need to balance customer choice, system integrity and marketer's risk.

The Committee recommends that the ongoing working group consider the details of these processes as it considers the broader questions of customer/marketer/distributor relationships.

8. *What is the marketer's obligation to serve customers and what is the procedure leading to the invoking of the "supplier of last resort" clause by the distributor?*

The obligations between a marketer and a customer will be dealt with in the terms of their contract. Those terms should provide for the consequences of breach by either party of the contract. If the marketer fails to supply gas for the customer, the distributor may supply the customer through its supply of last resort. The failure of a customer to pay will have different consequences – depending on whether the party performing the billing function is a marketer or

Report of Consensus Committee on Natural Gas Issues

the distributor. If the party performing the billing function was the marketer, and if the customer failed to pay, the marketer would implement the appropriate procedures to seek payment and, if still unpaid, provide notice to the customer that it will no longer supply gas. The marketer would then notify the distributor of its intention to cease to supply gas for that customer, and it would be up to the distributor to determine whether the customer should be supplied from the default supply (for example, for social reasons as set out in G below), or be disconnected (gas supply shut off). If the party performing the billing function was the distributor, it would be responsible for notifying both the marketer and the customer about the consequences of failure to pay. The Committee agrees that only the distributor should have the right to disconnect the customer.

There are numerous details of either process which need to be worked out. For example, there are specific processes required if a landlord fails to pay - but the tenants who will be affected by discontinuation are not parties to the supply contract. There are also details of timing, as to the extent to which appropriate notices to the defaulting customer are provided by the marketer or the distributor and as to credit and collection.

The Committee recommends that the ongoing working group address these details.

9. *Under what circumstances would a marketer have the right to discontinue supply (as opposed to disconnecting a customer)? In other words, under what circumstances could a customer seek another supplier?*

These two questions appear to raise separate issues. The first question concerning the discontinuance of supply would be dealt with by the terms of the contract, as discussed briefly in F8 above. In answer to the second question, the Committee recognizes that a customer may seek another marketer at any time, if the customer is prepared to accept the consequences of breaching his or her contract with the initial marketer. Of course, the customer may seek another marketer at the end of a supply contract, or if he has negotiated an early termination – in which case the terms of the contract will govern. As noted above, there are a number of technical issues to be resolved around a customer's change of marketer that should be discussed by the ongoing working group.

G. Rules regarding disconnection of service to a customer:

1. *How should disconnection for non-payment of accounts be handled? i.e. Should the marketer have shut-off rights at the meter (which is owned by the distributor)?*

Report of Consensus Committee on Natural Gas Issues

Some of the details of disconnection for non-payment of accounts have been discussed in F8 above. Other issues can only be addressed after responsibility and procedures for billing and collections have been finalized. These and other issues should be addressed by the ongoing working group.

As noted above in F8, only the distributor should have the right to disconnect the customer.

2. *Under what circumstances should disconnection not be permitted? i.e. should there be mandatory service periods for such circumstances as "winter gas", social and health considerations? If there is mandatory service, then what is the mechanism to fund this service?*

Participants agree that a policy should be developed by the distributor concerning circumstances under which customers would not be disconnected for social or weather-related reasons. Costs of supplying customers who fit within the policy would be dealt with as a cost of service issue in a rates hearing.

3. *What are the procedures for disconnection?*

In consultation with the proposed working group, the distributor should develop a policy concerning disconnection, including notification periods, grace periods and other details.

Conclusion

The Committee participants whose names are set out below agree that this report accurately represents their views on the issues outlined, and recommend that the Board accept this report in its entirety as evidence of those views for the purpose of its determination of the issues. The New Brunswick Department of Natural Resources and Energy was represented at the Committee's meetings, and has reviewed and commented on this report.

Enbridge Gas New Brunswick Inc.
Direct Energy Marketing
Engage Energy Canada, L.P.
Galdon Trading Ltd.
Irving Oil Limited
Neill and Gunter Limited
New Brunswick Power Corporation
Saint John Energy
EnergySource Canada (Sempra Energy Sales)

IN THE MATTER OF A Board Hearing to Consider Rules and Regulations Regarding the Conduct of Natural Gas Distributors and Marketers in the Province of New Brunswick

Attachment 1

Final Issues List

FINAL ISSUES LIST

A. Information to be filed by applicants who wish to become gas marketers in New Brunswick:

1. What specific information should be provided to identify the applicant, its relevant experience, its financial situation, its performance history and that of key personnel, the types of services and/or products which it plans to offer?
2. Should applicants intending to market to low-volume residential customers provide a sample residential contract?
3. What methods should be used to protect customers against failure of a marketer to meet its contractual commitments?
4. What information should be provided on gas supply and transportation arrangements?

B. Terms and conditions that should apply to persons receiving a marketer's certificates:

1. What should be the process required to receive a certificate?
2. What is the appropriate term for a certificate?
3. Should there be different classes of certificates and if so, what types should there be?
4. Under what conditions would a certificate be revoked or suspended?
5. What happens to a marketer's customers if a certificate is revoked or suspended?
6. What is the renewal process?
7. How should a license fee be designed?
8. Should certain information be treated as confidential and if so, what information and how should it be handled?

C. Rules (code of conduct) that should apply to gas marketers:

1. What requirements are necessary with respect to:
 - a) Fair Marketing Practices - i.e. the actions of marketers in making offers to consumers?
 - b) Identification of salespeople both in person and over the telephone?
 - c) Confidentiality of consumer information?
 - d) Conditions in offers -- price, time period, terms of payment and other terms such as deposits, late charges, billing frequency?
 - e) Contracts - length of contracts, what is the appropriate "cooling off" period?
 - f) Contract renewals?
 - g) Assignment, sale and transfer of contracts?
 - h) Independent arms-length consumer complaints resolution process?
 - i) Breach of contract - financial penalties? Loss of certificate?
 - j) Compensation to customers for failure to supply gas?
2. Should adherence to a code of conduct be part of the terms/conditions of a certificate?

D. Rules (code of conduct) that should apply to gas distributors governing their relationship to all gas marketers including affiliated companies:

1. What separation between the marketing affiliate and the distributor is required?
2. To the extent that there is a sharing of services/resources between the distributor and its affiliate(s), should a Service Agreement govern these matters and what should be included in

- this agreement - i.e. pricing mechanisms, cost allocation, confidentiality? What affiliate transactions should be allowed, if any, without prior Board approval - i.e. dollar amount of the transaction?
3. If there is a marketing affiliate, should it be allowed to have a name similar to its distributor? Can the distributor and the affiliate participate in joint advertising?
 4. What is the complaint process? Penalties for non-compliance?

E. Information to be provided to the Board by gas marketers and gas distributors:

1. What information should marketers and distributors provide to the Board so that the Board can determine that consumers are adequately protected and that there is a level playing field between the distributor and all gas marketers, including the distributor's marketing affiliate?
2. What information will the Board require marketers and distributors to maintain to ensure compliance with the regulations/codes and under what circumstances will that information be reported to the Board?
3. What information should be provided on changes in corporate structure and when?

F. Nature of the relationship between gas distributors, gas marketers and their customers:

1. In the current greenfield environment, and specifically, in the upcoming months, how should information be coordinated between the distributor and all marketers regarding the rollout of pipe and the offering of gas to ensure effective development of a natural gas industry in NB?
2. What types of information should be exchanged by marketers and the distributor and what are the protocols in place regarding the access to and the use of such information?
3. What type of information should be presented to the public? How? By whom? How to finance this activity?
4. How will load balancing be provided?
5. What constitutes customer service?
6. How exactly should customer service be initiated?
7. How will customers change marketers?
8. What is the marketer's obligation to serve customers and what is the procedure leading to the invoking of the "supplier of last resort" clause by the distributor?
9. Under what circumstances would a marketer have the right to discontinue supply (as opposed to disconnecting a customer)? In other words, under what circumstances could a customer seek another supplier?

G. Rules regarding disconnection of service to a customer:

1. How should disconnection for non-payment of accounts be handled? i.e. Should the marketer have shut-off rights at the meter (which is owned by the distributor)?
2. Under what circumstances should disconnection not be permitted? i.e. should there be mandatory service periods for such circumstances as "winter gas", social and health considerations? If there is mandatory service, then what is the mechanism to fund this service?
3. What are the procedures for disconnection?

IN THE MATTER OF A Board Hearing to Consider Rules and Regulations Regarding the Conduct of Natural Gas Distributors and Marketers in the Province of New Brunswick

Attachment 2

**Consensus Committee Proposal
Re Application Filing
Requirements For Gas Marketer
Certificates**

Attachment 2

Consensus Committee Proposal Re Application Filing Requirements For Gas Marketer Certificates

1. The Board amend subsection 11(9) of the Board's *Gas Distribution and Marketers' Filing Regulation* by replacing paragraph (a) with the following paragraphs:

- (a) security or assurances as described below in form reasonably satisfactory to the Board:
- (i) documentary evidence that a recognized financial institution is prepared to provide a surety bond in favour of the Board (or other entity designated by the Board) in an amount calculated to secure performance of the proposed certificate holder's reasonably anticipated financial obligations over a reasonable prospective period; or
 - (ii) a written undertaking of the applicant to post and annually renew a letter of credit in favour of the Board (or other entity designated by the Board) in an amount calculated to secure performance of the proposed certificate holder's reasonably anticipated financial obligations over a reasonable prospective period;

except where the proposed certificate holder files with the Board:

- (iii) the most recent two years' audited financial statements of the proposed certificate holder;
- (iv) if it was incorporated within the previous twelve months and audited financial statements are not available for at least one year, *pro forma* financial statements signed by a director of the proposed certificate holder;
- (v) documentary evidence (which may be submitted pursuant to measures established by the Board to maintain the confidentiality of the submitted information) of the proposed certificate holder's current financial position, including the proposed certificate holder's net worth, current ratio and quick ratio calculated as of the most current date for which such information is available, and as of the fiscal year end for each of the preceding two fiscal years; or
- (vi) other evidence which the Board, in its discretion, deems adequately probative of the financial position of the proposed certificate holder, or reasonably satisfactory to secure performance of the proposed certificate holder's reasonably anticipated financial obligations over a reasonable prospective period;

and the Board is satisfied that it may dispense with the necessity for such security;

(a.1) for a proposed certificate holder relying on the financial position of an affiliate, evidence of the affiliate's undertaking to guarantee the financial obligations of the proposed certificate holder, together with the security or financial information described in paragraph 11(9)(a) concerning the guarantor;

2. The Board add a new subsection or subsections after subsection 11(17) of the Board's *Gas Distribution and Marketers' Filing Regulation* to provide for the following:

- The Board may, upon request of a proposed certificate holder, order that certain information filed by the proposed certificate holder be treated as confidential, and not be made available for public inspection except upon further order of the Board.
- For the Board to be entitled to treat applicable information filed by a proposed certificate holder for purposes of a single end use franchise as having also been filed for purposes of the same proposed certificate holder's application for a gas marketer's certificate.

IN THE MATTER OF A Board Hearing to Consider Rules and Regulations Regarding the Conduct of Natural Gas Distributors and Marketers in the Province of New Brunswick

Attachment 3

**Code of Conduct For
Gas Marketers**

**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**

Table of Contents

1.0	INTRODUCTION	1
1.1	Definitions	1
1.2	Interpretation of the Code	2
1.3	Purpose of the Code	3
1.4	Coming into Force.....	3
2.0	STANDARDS AND PRINCIPLES	3
2.1	Fair Marketing Practices	3
2.2	Identification	5
2.3	Information to be Maintained by a Gas Marketer.....	5
2.4	Confidentiality of Consumer Information.....	6
2.5	Conditions in Offers	7
2.6	Contracts.....	7
2.7	Contract Renewals.....	8
2.8	Assignment, Sale or Transfer of Contracts	9
2.9	Consumer Complaint Resolution Process	9
2.10	Breach of the Code	9

1.0 INTRODUCTION

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;

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

“**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 fifty thousand cubic metres 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 has received a certificate under 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;

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 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 comes into force on _____, 2000.

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

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) gas marketer certificate number;
- (c) telephone number of the gas marketer that may be reached by the general public;
- (d) name of the salesperson; and
- (e) photograph of the salesperson, if marketing door-to-door.

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

- 2.5.1 An offer shall clearly state the price, 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.
- 2.5.2 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.
- 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.

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.

2.8 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.

ATTACHMENT C

RESPONSE OF THE CONSENSUS COMMITTEE
TO PROPOSED BOARD STAFF QUESTIONS

RESPONSE OF THE CONSENSUS COMMITTEE TO BOARD STAFF QUESTIONS

Information to be filed with the Board

1. Should the names and addresses of all directors, all officers and any shareholders who own more than 10% of the company be filed with Board?

The names of the directors and officers of the company are required under Section 11(11) of the Gas Distribution and Marketers Filing Regulation. The names of shareholders of the company should not be required which is consistent with corporate legislation in New Brunswick.

Processing of an application for a certificate

2. Should the public be notified and given an opportunity to comment on applications received?

There was no consensus on this issue.

3. What criteria should be used in establishing the amount of any security to be required?

If the Board endorses the concept of a Working Group, this issue should go to the Working Group.

4. In what circumstances would a claim on the security arise?

If the Board endorses the concept of a Working Group, this issue should go to the Working Group. With respect to a claim on the security, it should be understood that although the Board may be the party named under a Bond or Letter of Credit, any money payable is ultimately to be available for aggrieved parties.

5. How would the proper amount of any claim be determined?

If the Board endorses the concept of a Working Group, this issue should go to the Working Group.

Issues 3, 4, and 5 should be decided in a timely manner by the Working Group as this information is important to marketers as part of their application process.

Code of conduct for marketers

6. How should the customer be informed of his or her ability to refer a complaint to the Board?

Section 2.5.1 of the proposed Code of Conduct requires an offer to clearly state information about the customer complaint process and be included in the contract. Section 2.9.1 of the Code requires a gas marketer to refer an unresolved complaint to the Board.

7. Should a third party be involved in the resolution of complaints (similar to the practice in Ontario)?

No, not at this time. However, if handling complaints becomes onerous, the Board could consider delegating this function.

8. Should contract have a disclosure statement similar to that used in Alberta (copy attached)?

See attached.

9. Should the price per unit of natural gas be clearly stated? If yes, should this information be included as part of the contract?

Section 2.5.1 of the proposed Code of Conduct requires the price to be clearly stated in the offer. Section 2.6.1 requires the marketer not to enter into a contract that is inconsistent with the offer.

Code of conduct for distributors

10. In your opinion what is meant by the term "contemporaneously" as used in the Consensus Committee report comment on issues D (1)(b)?

The Consensus Committee agrees with Board Chairman's interpretation of Section 69(1) of the Gas Distribution Act, 1999.

Proposal for a "Working Group"

11. Would it be open to any interested party?
12. Within the scope of this hearing which specific items would you suggest be referred to this group?
13. When would you require a decision from the Board for each item?
14. Do you anticipate that the approval of the Board will be requested for any items that receive agreement?
15. What would you suggest be the process to resolve any items for which agreement cannot be reached?

All Consensus Committee participants can individually speak to questions relating to the Working Group.

PROPOSED CONTRACT CLAUSES

1. The company that wants you to sign this contract is an independent gas marketing company. This company is not affiliated with the Government of New Brunswick. Any company that wishes to market natural gas in New Brunswick must be certified by the Public Utilities Board. The certification of an independent gas marketing company by the Public Utilities Board, in no way provides an endorsement by the Board of that marketer. The Standard Terms of Offer at the bottom of this contract must be initialed by the customer and salesperson to make this contract valid.

Customer's Signature _____

Company Representative's Signature _____

This Disclosure Statement dictates to marketers contract terms that the Consensus Committee believes are unnecessary. The Board has, in fact, endorsed an applicant by issuing a marketer's certificate. The suggested wording would also restrict Crown Corporations that are associated with the Government from marketing. However, the Board does have power under Section 61(2) to impose terms and conditions to the marketer's certificate that could include a disclaimer if the Board has reason to believe that there may be confusion as to the relationship of any particular marketer to the Government of New Brunswick.

2.

Standard Terms of Offer

This contract provides for the supply of natural gas to the premises named at the rate of \$X.XX per cubic meter (m3) for the period of _____ years.

This contract comes into effect 10 days from the date of the signing of the contract.

Customer's Initials _____

The Consensus Committee does not believe that these terms are necessary because:

- a) **Section 2.5.1 of the proposed Code of Conduct requires an offer to clearly state the price and time period for which the contract is in effect.**
- b) **Section 2.5.2 of the Code requires an offer to indicate whether it relates to specified premises and section 2.6.1 requires the gas marketer to enter into contracts which are consistent with the offer.**

- c) Section 2.6.3 of the Code requires a 10 day cooling off period to be included as a condition in every contract.**

The Committee participants whose names are set out below agree that this report accurately represents their views on the issues outlined and recommend that the Board accept this report in its entirety as evidence of those views for the purpose of its determination of the issues. The New Brunswick Department of Natural Resources and Energy was represented at the Committee's meetings, and has reviewed and commented on this report.

Enbridge Gas New Brunswick Inc.
Direct Energy Marketing
Engage Energy Canada, L.P.
Galdon Trading Ltd.
Irving Oil Limited
Neill and Gunter Limited
New Brunswick Power Corporation
Saint John Energy
EnergySource Canada (Sempra Energy Sales)