

FOR DISCUSSION PURPOSES ONLY

**MUNICIPAL GAS SYSTEMS CORE
MARKET REGULATION**

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Interpretation

1(1) In this Regulation,

- (a) “Act” means the *Municipal Government Act*;
- (b) “agent” or “consumer’s agent” means a person who is the agent of a core consumer for purposes related to the core consumer’s direct supply arrangement or to any other rights or obligations of the core consumer under this Regulation;
- (c) repealed AR 254/2007 s33;
- (d) “buy-sell contract” means a contract or arrangement under which a distributor purchases from a core consumer or from a core consumer and the consumer’s agent during a specified period, gas in a quantity that is expected not to exceed the quantity of gas the distributor is obligated under the Act to supply to the core consumer during the same period;
- (d.1) “Commission” means the Alberta Utilities Commission;
- (e) “consumer” means a consumer of gas who takes delivery of the gas at its place of consumption by

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means of an urban gas system operated by a distributor;

- (f) “consumer supply contract” means a contract or arrangement under which a core consumer, or a core consumer and the consumer’s agent, obtains a supply of gas from a direct seller;
- (g) “core consumer” means a consumer other than
 - (i) a person who uses or consumes the gas primarily as a raw material or as a fuel, whether for space heating, water heating or otherwise, in an industrial or manufacturing operation, or
 - (ii) a person who has sustainable access to and facilities that allow the person to use or consume a source of energy, other than gas, in quantities sufficient to satisfy the requirements for which the gas would otherwise be used or consumed;
- (h) “direct seller” means a person, other than a distributor, who sells gas to a consumer or to another person who purchases the gas as an agent of the consumer for the purposes of section 31 of the Act;
- (i) “direct supply arrangement” means a consumer supply contract and
 - (i) a buy-sell contract, or
 - (ii) a utility transportation arrangement,

entered into or made in conjunction with the consumer supply contract;
- (j) “distributor” means distributor as defined in section 31(1) of the Act but does not include a rural gas co-operative association described in section 31(1)(c)(ii) of the Act;
- (k) “entry date” means the date for the commencement of deliveries under a direct sales arrangement;
- (l) “gas purchase option agreement” or “option agreement” means an agreement referred to in section 4(1)(i);

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- (m) “location”, in relation to a core consumer, means the place at which the core consumer consumes the gas delivered to the consumer under a direct supply arrangement;
- (n) “option notice” means a written notice given by a distributor to a direct seller respecting the exercise of the option granted to the distributor by a gas purchase option agreement;
- (o) “prescribed” means prescribed by the distributor;
- (p) “return date” means the date specified in a return notice as the date on which the core consumer will cease to obtain a gas supply under a direct supply arrangement;
- (q) “return notice” means a written notice to a distributor signed by or on behalf of a core consumer indicating that the core consumer will cease to obtain a gas supply under a direct supply arrangement on a prescribed return date specified in the notice;
- (r) “transportation service contract” means a contract under which a distributor agrees to transport in its urban gas system, on a firm service basis, gas purchased under a consumer supply contract, for delivery at a core consumer’s location;
- (s) “transportation service order” means an order of the Board under section 31(4) of the Act requiring a distributor to transport by means of its urban gas system gas supplied to a core consumer under a consumer supply contract, for delivery at the consumer’s location;
- (t) “urban gas system” means a system or works of a public utility for the distribution of gas to consumers within an urban municipality;
- (u) “urban municipality” means an urban municipality as defined in section 31(1) of the Act;
- (v) “utility transportation arrangement” means
 - (i) a transportation service contract, or
 - (ii) a transportation service order.

(2) For the purposes of this Regulation,

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- (a) a person is a consumer's distributor if the distributor is the operator of the gas distribution system by means of which gas is delivered to the consumer's location;
- (b) a reference to the right of a core consumer to obtain a gas supply under a direct supply arrangement is a reference to the right conferred on the consumer by section 31(3) of the Act to obtain, subject to this Regulation, a supply of gas from a direct seller for delivery to the consumer by means of the urban gas system of the consumer's distributor;
- (c) a reference to a consumer supply contract, buy-sell contract, gas purchase option agreement, transportation service contract or transportation service order includes an amendment, variation or replacement of that contract, agreement or order;
- (d) if a consumer supply contract, buy-sell contract, gas purchase option agreement, transportation service contract or transportation service order is amended to extend its term, a reference to the term of the contract, agreement or order is a reference to the extended term.

(3) If a person is a core consumer in respect of more than one location and the gas consumed at each of those locations is separately metered, then, for the purposes of this Regulation, that person is to be treated as a separate consumer in relation to each of those locations and that person's rights and obligations are to be determined in relation to each of those locations separately.

(4) If the distributor is authorized by this Regulation to prescribe a date, deadline or period, the distributor may prescribe the date, deadline or period generally or with respect to a specific case or class of cases.

(5) The distributor may prescribe

- (a) the date or dates in a year on which deliveries of gas may commence under a direct supply arrangement;
- (b) the date or dates in a year that may be specified in a return notice as the return date;
- (c) rules respecting the giving of option notices, notices under section 4(1)(d) and return notices, including notice periods.

AR 93/2001 s1;254/2007

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Application of Regulation

2(1) An urban municipality that operates an urban gas system and has operated it continuously since on or before December 31, 1994 may by bylaw provide that this Regulation, except section 1 and this section, does not apply to its urban gas system either in relation to

- (a) all core consumers, or
- (b) any class or classes of core consumers specified in the bylaw.

(2) If this Regulation, other than section 1 and this section, does not apply to a core consumer by reason of a bylaw under subsection (1), then, during a period that the bylaw is in effect, the core consumer does not have the right to obtain a gas supply under a direct supply arrangement.

(3) Despite anything in this Regulation, a consumer does not have the right to obtain a gas supply from a direct seller for delivery to the consumer by means of a gas distribution system within part of an urban municipality operated by a rural gas co-operative association as defined in the *Gas Distribution Act* under an agreement referred to in section 45 of the *Municipal Government Act*.

(4) If a bylaw is passed under subsection (1), despite anything in the bylaw or subsections (1) and (2),

- (a) the bylaw does not affect any consumer supply contract, buy-sell contract, gas purchase option agreement, transportation service contract or transportation service order in effect when the bylaw comes into force, and
- (b) this Regulation continues to apply to those contracts, agreements and orders and to the distributor in relation to those contracts, agreements and orders and the core consumers, agents and direct sellers to whom those contracts, agreements and orders apply.

Classes of consumers

3 Core consumers are established as a class of consumer for the purposes of section 31 of the Act.

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Conditions of right to obtain direct gas supply

4(1) The right of a core consumer to obtain a gas supply under a direct supply arrangement is subject to the following conditions:

- (a) the commencement date of deliveries of gas under the consumer's direct supply arrangement must be a prescribed entry date;
- (b) the core consumer must be a party to a consumer supply contract with an initial term consisting of at least 12 consecutive months;
- (c) any renewal or extension of the term of the consumer supply contract must be for a period of at least 12 consecutive months;
- (d) the core consumer must give to the consumer's distributor, not later than the prescribed deadline prior to the entry date, a written notice showing
 - (i) the consumer's intention to obtain a gas supply under the consumer's direct supply arrangement, and
 - (ii) the entry date for the commencement of deliveries of gas under the direct supply arrangement;
- (e) the core consumer must pay to the consumer's distributor the compensation, if any, determined by the distributor as being related to
 - (i) costs to the distributor associated with the consumer obtaining all or part of the consumer's gas supply under a direct supply arrangement, and
 - (ii) the distributor's ongoing costs related to the administration of a buy-sell contract or transportation service contract entered into in conjunction with the consumer supply contract;
- (f) the direct seller must have a supply of gas in the form of gas reserves or gas under contract, or a combination of both, that is sufficient to meet the aggregate of the direct seller's delivery obligations under
 - (i) all of the direct seller's consumer supply contracts, and

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- (ii) all gas purchase option agreements to which the direct seller is a party and under which the distributor has exercised the option to purchase gas from the direct seller,

and that is not committed to meeting the direct seller's obligations to deliver gas under any other contracts;

- (g) there must be in effect for at least 12 consecutive months from the entry date a buy-sell contract or utility transportation arrangement in conjunction with the consumer supply contract;
- (h) there must be in effect throughout the term of the consumer supply contract a corporate warranty in accordance with section 5(1) and given by the direct seller to the core consumer, unless the direct seller is obligated to the distributor under clause (j);
- (i) there must be in effect throughout the term of a buy-sell contract or utility transportation arrangement a gas purchase option agreement in accordance with section 5(2) and made between the direct seller and the distributor;
- (j) throughout the term of a buy-sell contract or utility transportation arrangement
 - (i) the core consumer,
 - (ii) if the core consumer has an agent, the core consumer and the agent, or
 - (iii) the direct seller,

must be obligated under the contract or arrangement to pay the distributor any amount determined by the distributor as compensation for the failure to deliver gas to the distributor in accordance with the contract or arrangement;

- (k) if gas purchased to meet delivery obligations under the direct supply arrangement is transported by one or more pipelines upstream from the distributor's urban gas system, there must be contracts in effect throughout the term of the consumer supply contract under which the gas is transported by those upstream pipelines on a firm service basis.

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(2) The core consumer or the direct seller must, prior to the entry date for a direct supply arrangement, warrant to the distributor that all of the conditions enumerated in subsection (1)(b), (f), (h) and (k) have been complied with.

Corporate warranty and option agreement

5(1) A corporate warranty referred to in section 4(1)(h) must, at a minimum, consist of a promise by the direct seller to indemnify

- (a) the core consumer, or
- (b) if the core consumer has an agent, the core consumer and the agent,

for any amounts for which the core consumer or the core consumer and the agent, as the case may be, are liable by reason of an obligation under section 4(1)(j), where the failure to deliver gas to the distributor in accordance with a buy-sell contract or utility transportation arrangement is the result of the failure of the direct seller to deliver gas in accordance with that direct seller's obligations under the consumer supply contract.

(2) A gas purchase option agreement that is in effect during the term of a buy-sell contract or utility transportation arrangement must be in accordance with the following:

- (a) the agreement must provide for the granting by the direct seller to the distributor of an option, exercisable by the distributor in accordance with this subsection and subsection (3), to purchase gas from the direct seller in accordance with and subject to the conditions in this subsection and subsection (3);
- (b) the option may be exercised only if
 - (i) the buy-sell contract or utility transportation arrangement, as the case may be, is terminated or otherwise discharged before the expiration of its term, or
 - (ii) the term of the buy-sell contract or utility transportation arrangement, as the case may be, expires without being renewed or replaced, but the core consumer had failed to give a return notice to the distributor, at least 12 months before the expiration date, specifying the expiration date as the return date;

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- (c) in order to exercise the option, the distributor must give an option notice to the direct seller
 - (i) before the prescribed deadline following the effective date of the termination or discharge of the buy-sell contract or utility transportation arrangement, if the option is exercised pursuant to clause (b)(i),
 - (ii) before the prescribed deadline following the date on which the core consumer gave a return notice to the distributor, or
 - (iii) before the prescribed deadline following the expiration of the buy-sell contract or utility transportation arrangement, if the core consumer failed to give any return notice to the distributor before the expiration date;
- (d) the “option year” for the purposes of this subsection is
 - (i) the 12-month period following the effective date of the termination or discharge of the buy-sell contract or utility transportation arrangement, if the distributor gives an option notice under clause (c)(i), or
 - (ii) the 12-month period following the expiration of the term of the buy-sell contract or utility transportation arrangement, if the distributor gives an option notice under clause (c)(ii) or (iii);
- (e) an option notice must specify the quantity of gas to be purchased, which must be the distributor’s good faith estimate of the quantity of gas reasonably required by the distributor to meet, as the case requires,
 - (i) the distributor’s obligations to supply gas to the consumer during the option year, or
 - (ii) the part of the core consumer’s gas supply requirements that had been, or was intended to be, obtained under the direct supply arrangement during the option year;
- (f) unless the distributor and the direct seller agree otherwise, the period during which the gas may be purchased must be the whole of the option year;

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- (g) unless the distributor and the direct seller agree otherwise, the price of gas purchased by the distributor under the option agreement must be
 - (i) the price prescribed by the Commission, or
 - (ii) the price determined pursuant to a formula or method prescribed by the Commission,and the Commission, in prescribing that price or that formula or method, must have regard to market prices for gas sold in Alberta under contracts with similar terms and conditions and to any other factors the Commission considers appropriate;
- (h) the option agreement must provide a corporate warranty by the direct seller consisting of a promise by the direct seller to pay to the distributor amounts determined by the distributor as compensation to the distributor for the failure of the direct seller to deliver gas to the distributor in accordance with the direct seller's obligations under the option agreement.

(3) If 2 or more core consumers have the same agent and obtain their respective gas supplies under the same direct supply arrangement, and one of those core consumers ceases to obtain a gas supply under the direct supply arrangement before the expiration of the term of the buy-sell contract or utility transportation arrangement, then, for the purposes of subsection (2), the contract or arrangement is, in relation to that core consumer, deemed to be terminated or otherwise discharged when the core consumer ceases to obtain a gas supply under the direct supply arrangement.

AR 93/2001 s5;254/2007

Loss of right to obtain direct gas supply

6(1) A core consumer ceases to have a right to obtain a gas supply under a direct supply arrangement on the earliest of the following dates:

- (a) the return date specified in a return notice given to the distributor by or on behalf of the core consumer;
- (b) the date on which the buy-sell contract or utility transportation arrangement expires unless it is renewed before then or is replaced before then by a buy-sell contract or utility transportation arrangement having a term commencing immediately after that expiration date;

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- (c) the effective date of the termination of a buy-sell contract or transportation service contract by the distributor pursuant to the provisions of the contract or pursuant to subsection (3);
- (d) the effective date of the termination by the Commission of a transportation service order pursuant to the provisions of the order or pursuant to subsection (4).

(2) A return notice given to a distributor

- (a) must specify one prescribed return date, and
- (b) is irrevocable unless the distributor agrees to its revocation.

(3) A distributor may terminate a buy-sell contract or transportation service contract to which it is a party on the ground that a condition in section 4(1) has not been or is not being complied with or on any other ground the distributor considers justified in the circumstances.

(4) The Commission may, on application or on its own motion, terminate a transportation service order on the ground that a condition in section 4(1) has not been or is not being complied with or on any other ground the Commission considers justified in the circumstances.

(5) If a core consumer ceases to have a right to obtain a gas supply under a direct supply arrangement in respect of a location by reason of the operation of subsection (1), the core consumer may not regain that right in respect of the same location until the first entry date occurring after the 12-month period following the date on which the consumer lost the right.

AR 93/2001 s6;254/2007

Rights and obligations of the distributor

7(1) A distributor has the obligation to supply gas to a core consumer at a location after the consumer ceases to have the right to obtain a gas supply under a direct supply arrangement by reason of the operation of section 6(1).

(2) If a core consumer ceases to have the right to obtain a gas supply under a direct supply arrangement by reason of the operation of section 6(1), the consumer is liable to pay to the distributor the amount, if any, determined by the distributor as compensation to the distributor for the net costs

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associated with the consumer ceasing to obtain all or part of the consumer's gas supply under the direct supply arrangement.

(3) The costs in respect of which compensation is payable under subsection (2) may include any additional costs associated with

- (a) the lack of any return notice to the distributor before the core consumer lost the right to obtain a gas supply under a direct supply arrangement, or
- (b) the giving of a return notice to the distributor after the commencement of the prescribed notice period.

Settlement of disputes

8(1) The Commission may hear and determine

- (a) any dispute that arises as to whether
 - (i) any provision of this Regulation has been or is being complied with, or
 - (ii) any action taken or proposed to be taken by a distributor, direct seller, core consumer or agent is authorized by this Regulation;
- (b) an appeal by a core consumer or the consumer's agent from the termination by the distributor of a buy-sell contract or transportation service contract pursuant to section 6(3).

(2) Without limiting its jurisdiction under subsection (1), the Commission may

- (a) vary or revoke any decision or action that is the subject of a dispute referred to in subsection (1)(a);
- (b) make its determination effective as of the date on which the disputed decision or action was made or taken;
- (c) make any order that it considers just in the circumstances.

AR 93/2001 s8;254/2007

Repeal

9 The *Municipal Gas Systems Core Market Regulation* (AR 45/95) is repealed.

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Expiry

10 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on ~~July 31, 2018~~ July 31, 2020.

AR 93/2001 s10;354/2003;129/2008;127/2013

Amend the expiry date to July 31, 2020 to ensure this regulation is regularly reviewed.