



# RETAILER DISTRIBUTION SERVICE RULES

Effective: January 1, 2025

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## ARTICLE 1 - CONTEXT

### 1.1 Application

These *Retailer Distribution Service Rules* are part of every *Retailer Distribution Service Contract* of Apex Utilities Inc. (*Apex*).

### 1.2 Relationships

These *Retailer Distribution Service Rules* govern the relationship between *Apex* and the *Retailer* or any *Agent* acting on behalf of the *Retailer*, and between *Apex* and the *Customer*. These *Retailer Distribution Service Rules* complement *Apex's Commission-approved Natural Gas Utility Service Rules*, are part of *Apex's Gas Distribution Tariff* and apply to every *Retailer* unless varied by an Order of, or agreement approved by, the *Commission*.

### 1.3 Customers and Agents

Where the *Customer* has appointed the *Retailer* to act on the *Customer's* behalf, the *Retailer* will act in place of the *Customer*. Notwithstanding the foregoing, where the *Retailer* requires *Apex* to bill for *Gas Distribution Service* separately, *Apex* reserves the right to bill the *Customer* directly and receive payments for *Gas Distribution Service* directly from the *Customer*. Under this arrangement, *Apex's Natural Gas Utility Service Rules* apply with respect to payment terms for the *Customer*.

## ARTICLE 2 - DEFINITIONS

### 2.1 Definitions

The following words or terms, when used in these *Retailer Distribution Service Rules*, the *Rate Schedule* or in a *Retailer Distribution Service Contract* will, unless the context otherwise requires, have the following meanings:

“Account” means a record maintained by *Apex* containing receipts, deliveries, *Unaccounted-For Gas*, *Imbalance Purchases*, *Imbalance Sales* and adjustments applicable to each *Retailer* providing *Gas Services* to *Customers* served by the *Gas Distribution System*;

“Account Balancing” means the process of managing *Gas* receipts and/or *Gas* deliveries in an *Account* to keep the difference, net of adjustments, within the tolerance specified by the *Tolerance Zone*;

“Account on the Transmission System” means the account held by *Apex* on *TC Energy*;

“Act” means the *Gas Utilities Act – R.S.A. 2000 c.G-5*, as amended from time to time and any legislative enactment in substitution or replacement thereof;

“Agency Agreement” means an agreement between a *Retailer* and another party wherein the other party is appointed as *Agent* for that *Retailer*;

“Agent” means a person who, on behalf of a *Retailer* under an *Agency Agreement*, performs functions, including, but not limited to, *Retailer* transactions with *Apex*;

“Alberta Utilities Commission”, “AUC” or “Commission” means the *Alberta Utilities Commission* or its successor;

“Apex Utilities Inc.” or “Apex” means *Apex Utilities Inc.* or its successor;

“Apex Emergency Phone Number” means *Apex’s* Emergency Phone Number as provided on *Apex’s* website at [www.apexutilities.ca](http://www.apexutilities.ca) .;

“Apex General Inquiry Phone Number” means *Apex’s* General Inquiry Phone Number as provided on *Apex’s* website at [www.apexutilities.ca](http://www.apexutilities.ca).

“Backcast” is an estimate of a *Retailer’s* aggregate and per site gas consumption near the end of the *gas day* using models, actual and forecast temperatures for a *gas day* and/or *automatic meter reading*;

“Business Day” means any day other than Saturday, Sunday, or a statutory holiday in Alberta, except for Easter Monday;

“Code of Conduct Regulation” means the *Code of Conduct Regulation, A.R. 58/2015*, as amended from time to time and any legislative enactment in substitution or replacement thereof;

“Consent for Release of Customer Information” means the form used to obtain historical usage information outside of *Rule 010*;

“Consumer” means a person who enters into a marketing contract to purchase less than 2,500 gigajoules of gas per year as defined in *the Energy Marketing and Residential Heat Sub-Metering Regulation, A.R. 246/2005*, as amended from time to time, and any legislative enactment in substitution or replacement thereof;

“Consumer Protection Act” means the *Consumer Protection Act, RSA 2000, C-26.3*, as amended from time to time;

“Customer” means a person, firm, partnership, corporation, or organization, served under Rates 11, 12, 13, or 14 pursuant to the *Rate Schedule*, consuming *Gas* in end-use at its location and is connected to the *Gas Distribution System*;

“Customer Billing Information” means the information required to be included in the *Customer’s* bill issued by the *Retailer* as required by the *Natural Gas Billing Regulation, A.R. 185/2003* and provided by *Apex*;

“Customer Information” means the information specified in Part 1(1)(e) of the *Code of Conduct Regulation*;

“Customer Usage Information” means historical *Gas* consumption information as specified in *Rule 010*;

“Day” means a period of twenty-four (24) consecutive hours;

“Defaulting Party” will have the meaning set out in Article 14;

“Final Settlement” means the final calculation of settlement (S3) performed for the settlement *Month, as described in Rule 028*;

“Forecast” refers to the estimate of a *Retailer’s* aggregate consumption for a *Gas Day*. The forecast may be F1, F2 or F3 as described in *Rule 028*;

“Gas” means all natural gas, both before and after it has been subjected to any treatment or process by absorption, purification, scrubbing or otherwise, and includes all fluid hydrocarbons;

“Gas Day” means a *Day* beginning at eight hours (08:00), Mountain Standard Time;

“Gas Distribution Service” means the service required to deliver *Gas* to a *Customer* by means of the *Gas Distribution System* and includes any services *Apex* is required to provide by the *Commission* or under the *Act* or regulations made thereunder;

“Gas Distribution System” means all facilities owned or used by *Apex* to deliver *Gas* to a *Customer* through a system of pipelines, works, plant and equipment that is primarily a low-pressure system, including, without limitation, valves, meters, regulators, and machinery;

“Gas Distribution Tariff” means *Apex’s* distribution tariff, including its rates, tolls, charges and terms and conditions of service approved by the *Commission*, as defined in the *Act*, and amended from time to time;

“Gas Services” as defined in the *Act* means:

- i. The *Gas* provided and delivered, and
- ii. The services associated with the provision and delivery of the *Gas*, including
  - a) Arranging for the exchange or purchase of the *Gas*;
  - b) Making financial arrangements to manage the financial risk associated with the price of gas;
  - c) Arranging for Gas Distribution Service;
  - d) Arranging for delivery of *Gas* to specified Point(s) of Receipt on the *Gas Distribution System*;
  - e) Storage;
  - f) Billing, collection and responding to customer billing inquiries;
  - g) Maintaining information systems; and
  - h) Any other services specified by the Minister by Order as *Gas Services*;

“Gas Settlement” means Initial Monthly Settlement, Interim Settlement and/or Final Settlement as defined in *Rule 028*;

“GJ” means gigajoules or one billion (1,000,000,000) joules;

“Gross Heating Value” means the number of megajoules obtained from the combustion of a cubic metre of gas at a temperature of fifteen degrees Celsius (15°C), with the Gas free of water vapour, and at a pressure of 101.325 kPa absolute and with the products of combustion cooled to the initial temperature of the Gas and the water formed by the combustion condensed to the liquid state;

“Imbalance” means the difference between energy quantities of Gas received and Gas delivered, net of adjustments, in an *Account* each *Gas Day*;

“Imbalance Purchase” means the removal of an energy quantity outside the positive *Tolerance Zone* from the *Account Imbalance* and financial settlement of that quantity;

“Imbalance Sale” means the removal of an energy quantity outside the negative *Tolerance Zone* from the *Account Imbalance* and financial settlement of that quantity;

“Initial Monthly Settlement” means the first calculation of settlement (S1) performed for the settlement *Month*, as described in *Rule 028*;

“Intercontinental Exchange” means *Intercontinental Exchange, Inc.*, an electronic trading platform market participants may use for transactions related to, amongst others, Gas purchase or sale;

“Interim Settlement” means the second calculation of settlement (S2) performed for the settlement *Month*, as described in *Rule 028*;

“International System of Units” means a system of units based on the metric system and developed and refined by international convention especially for scientific work;

“J” or “joule” means the amount of work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force;

“kPa” means kilopascals of pressure gauge unless otherwise specified;

“Letter of Credit Default” means with respect to an outstanding letter of credit, the occurrence of any of the following events:

- (1) The issuer of the letter of credit ceases to be a *Qualified Institution*;
- (2) The issuer of the letter of credit fails to comply with or perform its obligations under such letter of credit and such failure continues after the lapse of any applicable grace period;
- (3) The issuer of such letter of credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of such letter of credit;
- (4) The letter of credit expires, terminates, or ceases to be in full force and effect at any time; or
- (5) Any party related to the issuance of such letter of credit or credit support provider is dissolved, becomes insolvent or is unable to pay its debts, or fails or admits in writing its inability generally to pay its debts as they become due, makes a general assignment, arrangement or composition with or for the benefit of its creditors, files a petition for itself or a petition is filed by a 3rd party under the *Bankruptcy and Insolvency Act* of Canada, the *Companies’ Creditors Arrangement Act*, or similar acts of other

forbearing jurisdictions.

“Load” means the amount of *Gas* delivered or required to be delivered at any specific point or points on the *Gas Distribution System*;

“LBDA” means *Apex’s* Load Balancing Deferral Account used to record certain revenues and expenses associated with load balancing the *Gas Distribution System*, including without limitation load balancing purchase/sales and *Imbalance Purchase/Sales*;

“Month” means a period beginning at eight hours (08:00), Mountain Standard Time, on the first *Day* of a calendar month and ending at eight hours (08:00), Mountain Standard Time, on the first *Day* of the next succeeding calendar month;

“Natural Gas Utility Service Rules” means the *Apex Natural Gas Utility Service Rules*, as amended by *Apex* and approved by the *Commission*, from time to time;

“NGX” means the Natural Gas Exchange Inc., an exchange for the trading and clearing of natural gas and electricity contracts operating in a North American Technology and Physical Clearing Alliance with *Intercontinental Exchange, Inc.*;

“Nomination” means an electronic request for *Gas* to flow at a *Point of Receipt* or a *Point of Delivery* at a specified rate of flow, commencing at a specified time; or, a specified quantity on a specified date(s);

“Non-Defaulting Party” has the meaning set out in Article 14;

“Notice of Non-Renewal” has the meaning set out in Article 11.2;

“Point of Delivery” for service by *Apex* to the *Customer*, means, unless otherwise specified in a *Retailer Distribution Service Contract* or other service agreement, the outlet side of a meter;

“Point of Receipt” means the point where the *Retailer* delivers *Gas* to the *Gas Distribution System* under the *Retailer Distribution Service Contract*. This is usually indicated by *Apex’s* acceptance of a receipt *Nomination* into the *Retailer’s Account*;

“Qualified Institution” means a Schedule I bank in Canada, a major U.S. commercial bank, or a foreign bank with a U.S. or Canadian branch office which is not the *Retailer* (or a subsidiary or affiliate of the *Retailer*) having assets of at least CAD 10 billion and with a credit rating of a least “A” by S&P Global Ratings (or an equivalent rating by a comparable credit rating service);

“R3 Regulation” means the *Roles, Relationships and Responsibilities Regulation, A.R. 186/2003*, as amended from time to time and any legislative enactment in substitution or replacement thereof;

“Rate Schedule” means the *Gas Distribution Tariff* rate schedule, including the general conditions of service, any applicable gas distribution service rates and any applicable rate riders and/or such other rate schedule(s) as may be approved for *Apex* by the *Commission*, from time to time;

Retailer Distribution Service Rules

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“Retailer” means a person or company other than *Apex*, selling *Gas* and *Gas Services* directly to *Customers*, entitled to enrol *Customers* for that purpose within *Apex*’s service area, and meeting any prudential requirements set forth in in these *Retailer Distribution Service Rules*. The term *Retailer* includes *Self-Retailers* and *Agents*;

“Retailer Distribution Service Contract” means the *Retailer Distribution Service Contract* between *Apex* and the *Retailer*, including all attached *Rate Schedules* and these *Retailer Distribution Service Rules*;

“Retailer Distribution Service Rules” means the *Apex Retailer Distribution Service Rules*, as amended by *Apex* and approved by the *Commission*, from time to time;

“Retailer Handbook” means the guide prepared by *Apex* describing the business processes between *Apex* and the *Retailer* in relation to the provision of service under these *Retailer Distribution Service Rules* and *Rule 028*;

“Retailer Identification” means the 9-digit number uniquely representing each *Retailer* operating within Alberta;

“Retailer of Record” means the *Retailer* that *Apex* recognizes as serving a given *Site* for a given *Day*; ;

“Rider H” means the rate rider, expressed as a percentage of deliveries, approved by the *AUC*, and applicable to *Retailer’s Account* for the recovery in-kind of *Unaccounted-for Gas*;

“Rule 004” means *AUC Rule 004: Alberta Tariff Billing Code Rules*, as set by the *Commission* and amended from time to time;

“Rule 010” means *AUC Rule 010: Rules on Standards for Requesting and Exchanging Site-Specific Historic Usage Information for Retail Electricity and Natural Gas Markets*, as set by the *Commission* and amended from time to time;

“Rule 028” means *AUC Rule 028: Natural Gas Settlement System Code rules*, as set by the *Commission* and amended from time to time;

“Same Day Market” means the intra-Alberta *Gas* market generally available during trading hours on a calendar *Day* for transactions applicable to the *Gas Day* commencing on the same calendar *Day*;

“Self-Retailer” means a *Customer* carrying out *Retailer* functions to obtain *Gas* solely for its own use;

“Site” means a unique end-use *Point of Delivery*, being the finest level where settlement recognizes *Retailer* assignments and receives consumption data;

“Site ID” means a unique identification number assigned by *Apex* for each unique end-use *Point of Delivery*;

“Special Charges Schedule” means the *Apex Special Charges Schedule*, as amended by

*Apex* and approved by the *Commission*, from time to time;

“Specific Facilities” means those facilities installed by *Apex* for the benefit of the *Customer* and required to deliver *Gas*;

“TC Energy” means TC Energy Corporation, including NOVA Gas Transmission Ltd (NGTL) and its successor(s), a *Gas* transmission system;

“Tolerance Zone” means the range of *Imbalances* within an *Account* where it is considered to be in balance without action being taken to adjust receipts into or deliveries from that *Account*;

“Unaccounted-For Gas” means a *Retailer’s* share of *Apex’s* line loss, unaccounted-for gas and compressor fuel at the rate specified in *Rider H* of the *Rate Schedule*;

“Yesterday Market” means the intra-Alberta natural gas market, generally available during trading hours on a calendar *Day* for transactions applicable to the *Gas Day* commencing on the previous calendar *Day*.

## 2.2 Conflict

- (1) If there is any conflict between a provision expressly set out in an Order of the *AUC* and these *Retailer Distribution Service Rules*, the Order of the *AUC* will govern.
- (2) If there is any conflict between a provision expressly set out in these *Retailer Distribution Service Rules*, as may be amended from time to time, and a *Retailer Distribution Service Contract*, the express provision of these *Retailer Distribution Service Rules*, will govern, as of their effective date.

## 2.3 Interpretation

- (1) In the interpretation of the *Retailer Distribution Service Contract* or these *Retailer Distribution Service Rules*, words in the singular will be read and construed in the plural or words in the plural will be read and construed in the singular where the context so requires.
- (2) The headings used throughout the *Retailer Distribution Service Contract* or these *Retailer Distribution Service Rules* are inserted for reference only and are not to be considered or taken into account in construing the terms or provisions of any article, clause or schedule nor are they to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.
- (3) The definitions of all units of measurement and their prefixes used throughout the *Retailer Distribution Service Contract* or these *Retailer Distribution Service Rules* will be in accordance with the *International System of Units*.

## ARTICLE 3 - GENERAL PROVISIONS

### 3.1 AUC Approval

These *Retailer Distribution Service Rules* have been approved by the AUC. The Company may amend these *Retailer Distribution Service Rules* by filing a notice of amendment with the AUC. Included in the notice to the AUC will be identification of the *Retailers* affected by the amendment and an explanation of how the affected *Retailers* will be notified of the amendments. Any amendment to the *Retailer Distribution Service Rules* will take effect 60 days after such notice is filed, unless the AUC otherwise directs.

### 3.2 Gas Distribution Tariff

The *Apex Gas Distribution Tariff* is available to the public on Apex's website at [www.apexutilities.ca](http://www.apexutilities.ca).

### 3.3 Effective Date

These *Retailer Distribution Service Rules* come into force as per the effective date shown on the cover page. Whenever Apex files notice of an amendment to these *Retailer Distribution Service Rules*, or when the AUC approves an amendment to these *Retailer Distribution Service Rules*, revisions will be posted to the Apex website, with the effective date of the amendments indicated thereon.

### 3.4 Waiver or Alteration

No agreement can provide for the waiver or alteration of any part of these *Retailer Distribution Service Rules* unless such agreement is first filed with, and approved by, the AUC.

### 3.5 Retailer Handbook

Apex has developed the *Retailer Handbook* to help *Retailers* and *Customers* understand the normal practices of Apex. The *Retailer Handbook* is available on Apex's website at [www.apexutilities.ca](http://www.apexutilities.ca). The *Retailer Handbook* will be updated, from time to time, to reflect industry changes, or the changing needs of *Retailers* and/or *Customers*. Apex is committed to follow practices in the *Retailer Handbook*. However, as these practices cannot cover every situation that may arise, it may be necessary to deviate from the *Retailer Handbook* in certain circumstances.

### 3.6 Ownership of the Gas Distribution System

- (1) Apex remains the owner of all segments of the *Gas Distribution System*, unless an agreement between Apex and the *Retailer* or *Customer* specifically provides otherwise.
- (2) Payment made by *Retailers* or *Customers* for costs incurred by Apex in installing any segment of the *Gas Distribution System* does not entitle *Retailers* or *Customers* to ownership of any such segment unless an agreement between Apex and the *Retailer* or *Customer* specifically provides otherwise.

### 3.7 New Gas Distribution System Segments, Specific Facilities and Service Additions

Apex reserves the right to communicate directly with the *Customer* in respect of any requests made by the *Customer*, or a party acting on its behalf, for the construction of new *Gas Distribution System* segments, *Specific Facilities*, or additional services as provided for in the *Natural Gas Billing Regulation, A.R. 185/2003*, and amended from time to time. Apex reserves the right to charge the *Customer* directly for any amounts required to be provided by the *Customer* under Apex's *Gas Distribution Tariff*.

### 3.8 Title or Interest in the Gas

Apex will not acquire any title or interest in the *Gas* being transported under the *Retailer Distribution Service Contract*.

### 3.9 Gas Under Apex Control

*Gas* delivered to Apex by the *Retailer* for *Gas Distribution Service* will be under the exclusive control of Apex from the time such *Gas* is accepted at the *Point of Receipt* until delivered to the *Point of Delivery*.

### 3.10 Apex Determines Routing

Apex does not dedicate the *Gas Distribution System* or any segment of the *Gas Distribution System for Gas Distribution Service* for the *Retailer* or the *Customer* and, accordingly, the routing and facilities used for *Gas Distribution Service* for the *Retailer* will be at Apex's discretion and may change from time to time.

### 3.11 Commingling or Exchange

In the course of transporting *Gas* through the *Gas Distribution System*, Apex may commingle or exchange *Gas* owned by, or transported for others.

### 3.12 Right to Transport

The *Retailer* covenants with Apex the *Retailer* has the right to transport all *Gas* delivered under the *Retailer Distribution Service Contract* to Apex at the *Point of Receipt*.

## ARTICLE 4 - GENERAL OBLIGATIONS OF THE RETAILERS

### 4.1 Timeliness and Due Diligence

- (1) The *Retailer* is required to exercise due diligence and use reasonable efforts in meeting its obligations under these *Retailer Distribution Service Rules* and perform its obligations in a timely manner.
- (2) The *Retailer* must adhere to all credit, deposit and security requirements specified in these *Retailer Distribution Service Rules*.

- (3) The *Retailer* is required to make every reasonable effort to ensure the *Customer* is aware of the provisions of these *Retailer Distribution Service Rules*.

#### 4.2 Arrangements with the Customer

Unless otherwise stated in these *Retailer Distribution Service Rules*, the *Retailer* will be solely responsible for having appropriate contractual or other arrangements with the *Customer* necessary to provide service to the *Customer*. *Apex* is not responsible for monitoring, reviewing, or enforcing such contracts or arrangements and is not liable for any loss, damages, cost, injury, expense, or other liability, whether direct, indirect, consequential, or special in nature, howsoever caused, as a result of the *Retailer's* failure to perform obligations to the *Customer*.

#### 4.3 Responsibility for Gas Services

The *Retailer* will be solely responsible for the provision of *Gas Services*, including, without limitation, the purchase of *Gas* supply, delivery of such *Gas* to the *Point of Receipt* and arranging for *Gas Distribution Service* of such *Gas* to the *Point of Delivery* for the *Customer*, subject to these *Retailer Distribution Service Rules*.

#### 4.4 Customer Authorization

The *Retailer* is responsible for obtaining the *Customer's* authorization to enrol the *Customer* for receipt of *Gas Distribution Service*. For the purpose of *Gas Services*, the *Retailer* is responsible for obtaining any consent required under the *Code of Conduct Regulation* and the *Personal Information Protection Act SA 2003 c. P-6.5*, as amended, or any similar or replacement legislation.

#### 4.5 Retailer ID

Any information exchange or communications between the *Retailer* and *Apex* under these *Retailer Distribution Service Rules* must include the *Retailer ID*.

#### 4.6 Single Retailer for Customers

*Apex* is not required to recognize and deal with more than one *Retailer* per *Customer* in respect of a *Point of Delivery* at any given time. Nothing in these *Retailer Distribution Service Rules* prohibits a *Customer* from entering into arrangements with multiple *Retailers* for a *Point of Delivery* provided a single *Retailer* is designated to be the *Customer's Retailer* for purposes of these *Retailer Distribution Service Rules*.

#### 4.7 Fees and Other Charges

*Apex* will provide all standard services hereunder pursuant to *Apex's Gas Distribution Tariff*. All additional, supplementary, or extra non-discretionary services provided by *Apex* to a *Retailer* or *Customer*, where applicable, will be charged a separate rate or fee, such as those included, without limitation, in *Apex's Special Charges Schedule*. Payment for these services will be in accordance with the provisions of these *Retailer Distribution Service Rules*.

## ARTICLE 5- CUSTOMER INQUIRIES AND CUSTOMER INFORMATION

### 5.1 Customer Inquiries

For *Customers* requesting information about retailer choice, *Apex* will direct them to the Utilities Consumer Advocate (UCA) where they may obtain such information. *Apex* is under no obligation to ensure the accuracy of any information provided by the UCA.

### 5.2 Customer Inquiries Related to Emergency, Outage, Safety and Environmental Situations

The *Retailer* must ensure *Customers* contacting the *Retailer* regarding distribution emergency conditions, outages, safety, or environmental situations related to the *Gas Distribution System* are immediately transferred to *Apex* using the *Apex Emergency Phone Number*. If the *Retailer* is unable to transfer a call to *Apex*, the *Retailer* will provide the *Apex Emergency Phone Number* to the *Customer*.

For continued quality customer care and for safety purposes, *Apex* may test or audit the time required by the *Retailer* to respond to such situations and communicate to the *Retailer* results considered by *Apex* to require corrective action by the *Retailer*.

### 5.3 Standard Requests for Customer Usage Information Pursuant to Rule 010

Requests for *Customer Usage Information* pursuant to *Rule 010* will be processed accordingly, provided *Apex* has received a Retailer Representation and Warranty Agreement signed by the *Retailer* in a form acceptable to *Apex*.

### 5.4 Providing Customer Information to Apex

The *Retailer* must notify *Apex* as promptly as reasonably practical of any changes to *Customer Information*, as *Apex* relies on this information to reasonably perform its *Gas Distribution Service* obligations to *Customers*. Such information will be provided in a form compliant with *Rule 028* and *Apex's Retailer Handbook*. *Apex* will not be liable for any loss, damages, cost, injury, expense, or other liability, whether direct, indirect, consequential, or special in nature, howsoever caused, as a result of the *Retailer's* failure to provide up-to-date and accurate *Customer Information* to *Apex*. *Apex* reserves the right to assess a charge at actual cost for additional processing work undertaken by *Apex* as a result of inaccurate *Customer Information* provided by the *Retailer*.

## ARTICLE 6 – PROVISION OF SERVICE

### 6.1 Request for Service

When the *Retailer* requests *Gas Distribution Service* from *Apex*, *Apex* must inform the *Retailer* of the conditions to be satisfied before a *Retailer Distribution Service Contract* can be accepted and service commenced. The *Retailer* must provide any information *Apex* reasonably requires to assess the request. *Apex* may reject the request if the *Retailer* wants non-standard conditions or if facilities are not available to provide safe and reliable service.

## 6.2 Qualification for Service

The *Retailer* must fulfill the following requirements to the satisfaction of *Apex* before *Apex* will provide *Gas Distribution Service* to the *Retailer*:

- (1) To initiate the provision of *Gas Distribution Service*, the *Retailer* must complete and provide a *Retailer Distribution Service Contract* to *Apex*. Where practicable, a single *Retailer Distribution Service Contract* between *Apex* and the *Retailer* will be used to serve all *Customers* under Rates 11, 12 and 14;
- (2) Satisfy the credit requirements of *Apex* as set forth in these *Retailer Distribution Service Rules* and the *Natural Gas Billing Regulation, A.R. 185/2003*, as amended from time to time;
- (3) For *Retailers* providing *Gas Services* to *Consumers*, as defined in the *Energy Marketing and Residential Heat Sub-Metering Regulation, A.R. 246/2005*, a certified copy of the *Service Alberta Marketing of Gas* license must be provided;
- (4) For all the *Retailers* providing *Gas Services* to *Customers* using 2,500 GJ or more of gas per year, warrant in writing to *Apex* it will comply with the provisions of the *Consumer Protection Act*, and any regulations or policies made thereunder;
- (5) Warrant in writing to *Apex*, the *Retailer* will comply with the guidelines established in the *Retailer Handbook*;
- (6) Meet the compliance testing protocol of *Apex* in respect of information exchange, as set forth in the *Retailer Handbook*;
- (7) Meet any other requirements *Apex*, acting reasonably, may impose to provide *Gas Distribution Service* hereunder. If *Apex* determines additional requirements must be satisfied to qualify for *Gas Distribution Service*, the following process will apply:
  - (a) Where *Apex* is confronted with a situation it, in its sole discretion, considers would materially alter the risk to *Apex*, or where *Apex* must impose additional requirements to comply with applicable legislation, *Apex* may implement the additional requirement and then apply to the *Commission* for approval of same; or,
  - (b) Where *Apex* is not confronted with the circumstances outlined in (a) above, *Apex* will apply to the *Commission* for approval of the proposed additional requirement prior to implementing same.

## 6.3 Provision of Gas Distribution Service

Upon satisfaction of the requirements in Article 6.2, *Apex* will provide *Gas Distribution Service* to the *Retailer*, on behalf of the *Customer*, subject to these *Retailer Distribution Service Rules* and the *Natural Gas Utility Service Rules*. Subject to complying with all applicable laws, and the directions or requirements of any of those mentioned above, *Apex* reserves the right, upon giving the *Retailer* three (3) *Business Days'* notice, acting reasonably, to discontinue *Gas Distribution Service* to the *Retailer*, if at any time the

*Retailer* no longer fulfills the above requirements.

#### 6.4 Application for Enrolment

- (1) To initiate the provision of *Gas Distribution Service* by *Apex*, the *Retailer* will complete and provide to *Apex* an enrolment for *Gas Distribution Service* in the form and manner set out in *Rule 028*. The *Retailer* will provide updated *Customer Information* with each enrolment.
- (2) Subject to the *Retailer* meeting the provisions of these *Retailer Distribution Service Rules*, *Apex* will accept an enrolment by the *Retailer* for provision of *Gas Distribution Service*. *Apex* reserves the right to verify the identity of the *Customer* and the accuracy of the *Customer Information*.
- (3) Upon receipt of a valid enrolment from the *Retailer* in the form and manner set out in *Rule 028*, *Apex* will recognize the *Retailer* as the *Retailer of Record* for that particular *Site*.
- (4) Enrolments will be processed by *Apex* in accordance with *Rule 028*.
- (5) *Apex* will normally estimate the meter reading for each *Customer* enrolled. If the *Retailer* requests a special off-cycle meter reading, *Apex* will make one attempt to read the meter and will assess a Special Meter Reading charge to the *Retailer*, as set forth in the *Special Charges Schedule*. If *Apex* cannot access the meter for a reading, *Apex* will estimate the meter reading and the *Customer* will be charged a *No Access Fee*.
- (6) If a *Retailer* finds it has enrolled a *Site* in error, the *Retailer* must notify *Apex* as soon as reasonably possible of the error in the manner indicated in *Rule 028*.
- (7) The *Retailer* will not be liable to *Apex* for any outstanding indebtedness of the *Customer* to *Apex* accruing prior to the *Retailer* receiving *Gas Distribution Service*.

### ARTICLE 7 - FINANCIAL MATTERS

#### 7.1 Retailer Pays Tariffs

- (1) The *Retailer* will pay *Apex* for those tariffs and charges set forth in the *Retailer Distribution Service Contract* as payable by the *Retailer*.
- (2) The *Retailer* will not be relieved by Force Majeure from the obligation to pay the charges set forth pursuant to this Article unless Force Majeure has been invoked by *Apex*.

#### 7.2 Billing

*Apex* will bill the *Retailer* for *Gas Distribution Service* provided in accordance with *Rule 004* billing procedures set out as follows:

- (1) For the purpose of determining the variable amount to be billed by *Apex* and paid by the *Retailer* for the transportation of *Gas* under the *Retailer Distribution Service Contract*, the unit to be used will be gigajoules.
- (2) *Apex* will invoice the *Retailer* each billing cycle for *Gas Distribution Service* provided by *Apex* for the period prior to the billing cycle. *Apex* reserves the right to perform off-cycle billings.
- (3) *Apex* may include, in any statement, any adjustments to billings for prior Months. Neither *Apex*, nor the *Customer*, nor the *Retailer* will be entitled to interest on any adjustment.
- (4) *Apex* reserves the right to bill the *Customer* directly for any amounts required to be provided by the *Customer* for *Specific Facilities*.
- (5) The *Retailer* is required to provide the *Customer* with notification of an *Apex Gas Distribution Tariff* rate change in the billing envelope or through electronic billing at the time of the first charge to the *Customer* at the new rate. Notwithstanding the foregoing, *Apex* reserves the right to directly provide the *Customer* with information about its *Gas Distribution Tariff*. *Apex* also reserves the right to contact the *Customer* directly for comments and receive feedback about *Apex's Gas Distribution Service* and *Gas Distribution Tariff*.
- (6) *Apex* reserves the right to correct for errors in a previous statement.
- (7) The *Retailer* will process the *Customer* payments and handle collection responsibilities. *Apex* will not assume any billing or collection obligations or responsibilities for, or on behalf of, the *Retailer*. *Apex* may, at its sole discretion and in addition to any other remedies available to it, restrict enrolment or terminate *Gas Distribution Service* provided to the *Retailer* if the *Retailer* does not pay all outstanding amounts owed to *Apex*.

### 7.3 Payment

- (1) The amount due on any bill is owing as of the invoice date. The *Retailer* will pay all amounts owed to *Apex*.
- (2) *Apex* will establish an electronic billing and payment procedure for the payment of services hereunder. Notwithstanding, *Apex* will accept payment by cash, cheque or electronic funds transfer drawn in *Apex's* favour if agreed to by *Apex*.
- (3) An Electronic Payment Transfer Agreement is included in the *Retailer Handbook* and sets forth the terms and conditions for making payments and providing remittance information electronically.
- (4) The *Retailer* will pay all amounts owed to *Apex* for any of the *Gas Distribution Services* provided by *Apex* regardless of whether the *Customer* has paid the *Retailer*.
- (5) Failure to receive a bill does not release the *Retailer* from the obligation to pay the

amount owing for any of the *Gas Distribution Services* provided by *Apex*.

#### 7.4 Unpaid Bills

- (1) If the *Retailer* defaults or is late in paying charges, subject to 7.4.3(d) below, *Apex* will provide the *Retailer* notice as required in 7.4.3(a) below. *Apex* will be entitled to draw on the credit facility of the *Retailer* if the *Retailer's* arrears are not paid within three (3) *Business Days* after the date of the notice. The *Retailer* must provide an additional deposit to replace the funds drawn down because of the default or late payment.
- (2) If the *Retailer* has not paid its invoice in full by 21 days from the invoice date, the payment will be considered late and *Apex* may assess the *Retailer* a late payment charge for any overdue amount, including previous late payment charges. The late payment percentage is set out in the *Special Charges Schedule*. Any payments will first be applied to unpaid balances.
- (3) If the *Retailer* defaults in its payments:
  - (a) *Apex* must provide the *Retailer* with a notice in writing stating the *Retailer* is in default in its payments to *Apex* under these *Retailer Distribution Service Rules* and advising the *Retailer* *Apex* may make a claim against the *Retailer's* security if the arrears are not paid within three (3) *Business Days* after the date of the notice;
  - (b) If, after the expiry of the period set out in (3)(a) above, the *Retailer's* arrears remain unpaid, *Apex* may make a claim against the *Retailer's* security to cover the arrears;
  - (c) If the *Retailer* has provided security in the form of a financial deposit, *Apex* may deduct from that deposit the amount of the unpaid arrears; and
  - (d) If, in the opinion of *Apex*, the giving of notice in accordance with (3)(a) above would impair *Apex's* ability to make a claim against the *Retailer's* security or to deduct the unpaid arrears from the *Retailer's* financial deposit, *Apex* may make the claim or deduct the unpaid arrears without notice.
- (4) *Apex* may, at its sole discretion and in addition to any other remedies available to it, restrict enrolment or terminate *Gas Distribution Service* to the *Retailer*, if such *Retailer* does not pay all outstanding bills in accordance with these *Retailer Distribution Service Rules*.

#### 7.5 Unauthorized Use

Where *Apex* determines there has been unauthorized use of *Gas Distribution Service* or the *Gas Distribution System*, including, but not limited to, meter or equipment tampering, unauthorized connection or reconnection, theft, or fraud, whereby *Apex* is denied full compensation for *Gas Distribution Services* provided, *Apex* will bill the *Retailer* for *Apex's* estimated *Gas Distribution Service* charges for such unauthorized use. *Apex* reserves the

right to bill the *Retailer* for repairs of damage or reconstruction of *Apex's Gas Distribution System*. Nothing in this Article will limit any other rights or remedies *Apex* may have in connection with such unauthorized use.

## 7.6 Disputes

- (1) In the event the *Retailer* disputes any amount owing, the *Retailer* will nevertheless pay to *Apex* the full disputed amount when payment is due and subject the dispute for resolution in accordance with these *Retailer Distribution Service Rules*. Following resolution of any such dispute pursuant to Article 18 – Dispute Resolution, *Apex* will return any amount found owing to the *Retailer*.
- (2) The right or ability of the *Retailer* to dispute a charge for service provided under the *Retailer Distribution Service Contract* or these *Retailer Distribution Service Rules* will only apply to requests in writing and are limited to charges rendered up to two (2) years prior to the date of written notice of the dispute. *Apex* reserves the right to assess a charge to the *Retailer* for administration of a billing dispute raised by the *Retailer* in circumstances where *Apex* is not responsible for any error.

## 7.7 Failure to Pay

In the event the *Retailer* fails to pay the full amount of any statement within sixty (60) *Days* after payment is due, *Apex*, in addition to any other remedy it may have, may suspend *Gas Distribution Service* provided to the *Retailer* (upon 48 hours written notice) until full payment is made and such suspension will not terminate or otherwise affect the *Retailer's* obligations to *Apex*.

# ARTICLE 8 - GAS DISTRIBUTION SERVICE INTERRUPTION

## 8.1 Continuous Supply

The Company will make all reasonable efforts to maintain a continuous *Gas* supply to the *Retailer's Customers*, but *Apex* cannot guarantee an uninterrupted *Gas* supply.

## 8.2 Interruption

Without liability of any kind to *Apex*, *Apex* will have the right to disconnect or otherwise curtail, interrupt, or reduce service to the *Retailer* (and the *Retailer's Customers*):

- (1) whenever *Apex* reasonably determines such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any segment of the *Gas Distribution System*;
- (2) to maintain the safety and reliability of the *Gas Distribution System*; or,
- (3) due to any other reason related to dangerous or hazardous circumstances including emergencies, forced outages, potential overloading of the *Gas Distribution System* or Force Majeure.

### 8.3 Reasonable Efforts

Apex will use reasonable efforts to minimize any scheduled curtailment, interruption, or reduction to the extent reasonably practicable under the circumstances, to provide the *Customer* with prior notification of any such curtailment, interruption, or reduction to the extent reasonably practicable, and to resume *Gas Distribution Service* as promptly as reasonably practicable.

## ARTICLE 9 - DISCONTINUANCE OF GAS DISTRIBUTION SERVICE

This Article, as amended from time to time, specifies the processes for the transactions between Apex and the *Retailer* in relation to de-enrolment of a *Site*, including, without limitation, the circumstances when the *Retailer* chooses to discontinue *Gas Distribution Service* for the *Customer*, as set forth in Article 9.1 of these *Retailer Distribution Service Rules* or when Apex discontinues *Gas Distribution Service* to the *Retailer*, as set forth in Article 9.2.

### 9.1 Discontinuance by the Retailer

- (1) To discontinue *Gas Distribution Service*, the *Retailer* must provide Apex with an electronic notice of de-enrolment in accordance with *Rule 028*.
- (2) In accordance with Article 12 of these *Retailer Distribution Service Rules*, Apex will obtain meter reads on a monthly basis. If Apex does not obtain an actual read at the time of the de-enrolment, Apex will estimate a meter read. At the request of the *Retailer*, Apex will obtain an actual off-cycle meter read and assess a charge to the *Retailer* as set forth in the *Special Charges Schedule*.
- (3) Apex will accept or reject the *Retailer's* de-enrolment in accordance with *Rule 028*.
- (4) Notwithstanding the *Retailer's* responsibilities to provide updated *Customer Information* pursuant to Article 5 – *Customer Inquiries* and *Customer Information*, **the *Retailer* must update *Customer Information* upon notice of de-enrolment as per *Rule 028*.**
- (5) The *Retailer* will provide Apex with updated *Customer Information* pursuant to Article 5.
- (6) The *Retailer* is responsible to ensure the *Customer* is provided notice of the de-enrolment and the consequences of such de-enrolment, including the fact Apex will not be held liable for any disputes as between the *Customer* and the *Retailer*.
- (7) Upon receipt of a successful de-enrolment from a *Retailer* in the form and manner set out in *Rule 028*, and if the *Site* is not subsequently enrolled by a replacement *Retailer* within the period set out in *Rule 028*, the *Site* will be enrolled for default supply *Gas Service*.
- (8) The *Retailer* will remain responsible for *Gas Services* to the *Site* until a replacement *Retailer* is enrolled for the *Site*, a de-enrolment from the current

*Retailer* processed, default supply *Gas Service* is in place for the *Site*, or the *Site* is permanently disconnected, whichever is earlier.

- (9) The *Retailer* may revoke a notification to de-enrol a *Site* as set out in *Rule 028*.

## 9.2 Discontinuance by Apex

- (1) *Apex* may discontinue or restrict *Gas Distribution Service* to the *Retailer* if any of the following occur:
- (a) The *Retailer* fails to meet its obligations under these Retailer Distribution Service Rules or the Retailer Distribution Service Contract with Apex;
  - (b) The *Retailer* fails to meet its prudential requirements pursuant to Article 11; or
  - (c) The *Retailer's* license is revoked by Alberta Government Services or another responsible authority.
- (2) Notification of discontinuance will be made electronically to the *Retailer*. *Apex* will provide the *Retailer* three (3) *Business Days'* notice before *Apex* discontinues *Gas Distribution Service* to the *Retailer*. Upon discontinuance of *Gas Distribution Service* to the *Retailer* pursuant to this Article, *Apex* will assume provision of the affected service it is reasonably capable of providing.

## ARTICLE 10 - SERVICE DISCONNECTS AND RECONNECT

This Article, as amended from time to time, specifies the processes for the transactions between *Apex* and the *Retailer* in relation to the physical disconnect of a *Site*.

### 10.1 Disconnection of Service

- (1) Disconnection by *Apex*
- (a) *Apex* reserves the right to temporarily or permanently disconnect the *Customer* from the *Gas Distribution System* in a number of circumstances, including, but not limited to, evidence of safety violations, energy theft or fraud by the *Customer*, threats or harassment made against employees or agents of *Apex*, failure to provide access to the *service site* for meter readings or other necessary work or any other failure by the *Customer* to meet its obligations under the *Natural Gas Utility Service Rules* or *Retailer Distribution Service Rules*.
  - (b) If the disconnect is a result of a safety violation, *Apex* will reconnect the service only after the safety problem is resolved and the *Customer* has provided or paid *Apex's* costs of providing such devices or equipment as may be necessary to resolve such safety problem and to prevent such damage, interference, or disturbance. *Apex* may assess a Reconnection Fee as set forth in the *Special Charges Schedule*.

- (2) Disconnection at Request of the *Retailer*
- (a) In accordance with the *R3 Regulation*, the *Retailer* will have the right to request *Apex* disconnect *Gas Distribution Service* to a *Site* where the *Retailer* is the *Retailer of Record*. *Apex* will process such requests in accordance with *Rule 028*.
  - (b) The *Retailer* will remain responsible for all *Gas Services* to the *Site* until *Apex* has completed the disconnection.
  - (c) *Apex* reserves the right to assess charges to the *Retailer* to disconnect *Gas Distribution Service* or attempt to disconnect service to the *Customer* at actual cost, including, but not limited to, direct labour, materials, services and equipment, plus applicable overheads.
  - (d) *Apex* will notify the *Retailer* if a disconnect request was not successfully completed and include the reason why it was not successfully completed. If the *Retailer* still requires the *Customer* to be disconnected, the *Retailer* must re-issue a disconnect request.
  - (e) *Apex* will not be liable to any person for any damages, cost, expense, injury, loss, or other liability of any kind, whatsoever or however caused, resulting directly or indirectly from its good faith performance of its responsibilities under the provisions of this Article.
- (3) Disconnects Affecting Lines and Equipment
- a) If the purpose of a disconnection can be reasonably expected to affect the *Gas Distribution System*, the *Customer* is expected to notify *Apex* of the *Customer's* plans prior to the disconnection. The *Retailer* will provide the *Customer* with the *Apex General Inquiry Phone Number*. Such purposes include, but are not limited to, relocation of *lines and equipment*, *service site* renovations, *service site* demolition and permanent stoppage in the use of *Gas*.

## 10.2 Reconnect Service

Before reconnecting or restoring service to a *Site*:

- a) Reconnection of service to a *Site* that is de-energized or disconnected requires an energize request from a *Retailer*.
- b) The *Retailer* or *Customer* must comply with *Apex's* Natural Gas Utility Service Rules and these Retailer Distribution Service Rules.
- c) *Apex* reserves the right to assess, in accordance with these *Retailer Distribution Service Rules* and the *Natural Gas Utility Service Rules*, a Reconnection Fee and any other applicable charges set forth in the *Special Charges Schedule*.

## ARTICLE 11 - PRUDENTIAL REQUIREMENTS

In circumstances where the *Retailer* has multiple *Retailer Identification* numbers, the review, setting and maintaining of prudential requirements will be based on the *Retailer* Business Function Identification code as defined in *Rule 028*.

### 11.1 Setting of Prudential Requirements

The *Retailer* must fulfill the requirements set forth in this Article to the satisfaction of Apex before Apex will provide *Gas Distribution Service* to the *Retailer*.

- (1) Subject to review and reassessment of the prudential requirements of the *Retailer* by Apex, from time to time, the *Retailer* is required to meet and maintain such financial and other prudential requirements as set out in the *Natural Gas Billing Regulation, A.R. 185/2003*, to ensure the *Retailer* is, and remains, of sufficient financial standing to meet its ongoing financial obligations.
- (2) Apex will confirm the credit rating of the *Retailer*, affiliate or person guaranteeing the financial obligation of the *Retailer*. The credit rating will mean the bond rating according to Standard and Poor's Bond Rating Service or an equivalent bond rating from Dominion Bond Rating Service or Moody's Investors Service.

The minimum credit rating qualifying a *Retailer* for a reduction in security or allowing a person to provide an irrevocable guarantee of the *Retailer's* financial obligation is BBB-, as set out in section 6(3) of the *Natural Gas Billing Regulation A.R. 185/2003*, as amended from time to time.

If the *Retailer* has obtained more than one credit rating, the lowest credit rating will be used in the assessment.

- (3) Subject to review and reassessment, Apex will determine the amount of the security reduction available for each *Retailer*, and the maximum amount of any guarantee required from the person guaranteeing the financial obligations of the *Retailer*, subject to sections 5, 6 and 7 of the *Natural Gas Billing Regulation, A.R. 185/2003*, as amended from time to time. Apex will notify the *Retailer* of its security requirement within 20 (twenty) *Business Days* from the receipt of the *Retailer's* complete application for service.
- (4) For purposes of calculating the amount of the *Retailer's* security deposit pursuant to section 5(2) of the *Natural Gas Billing Regulation, A.R. 185/2003*, the *Retailer* must project its payments under Apex's *Rate Schedule* over a period equal to the lesser of (A) 45 days, or (B) the total of (i) 20 days, plus (ii) the number of days between consecutive bills issued by Apex to the *Retailer*, plus (iii) the number of days from the issuance of a bill by Apex until payment is due from the *Retailer*.
- (5) For the purposes of calculating the amount of the *Retailer's* security deposit required, the *Retailer* will add an additional 20 days of projected payments (the *Load Balancing Security*) under Apex's *Rate Schedule* to the amount of security deposit required under the *Natural Gas Billing Regulation A.R. 185/2003*, as

amended from time to time as identified in part (4) above, which will serve as separate security in respect of any *Imbalance Sales Apex* may be required to charge the *Retailer* in order to balance *Retailer's Account*.

- (6) For the purposes of calculating the amount of the *Retailer's* annual prudential required, the *Retailer* will add any additional projected payments *Apex* is required to remit on behalf of the *Retailer's customers* related to any carbon-related tax, fee, or levy enacted by a governmental authority, which shall serve as security in respect of any additional payments that *Apex* is required to remit to any governmental authority on behalf of the *Retailer's customers*.
- (7) Subject to section 6 of the *Natural Gas Billing Regulation, A.R., 185/2003*, as amended from time to time, the *Retailer* will provide security in the manner set out in the *Retailer Handbook*, in the form of a financial deposit, a bond, an irrevocable letter of credit from a financial institution acceptable to *Apex*, or an irrevocable guarantee. An irrevocable guarantee may only be provided from a person(s) acceptable to *Apex*, other than the *Retailer*, with a qualifying credit rating.

## 11.2 Maintaining Prudential Requirements

- (1) If the *Retailer's* actual outstanding charges under *Apex's Rate Schedule* are materially greater than the value projected by the *Retailer* under Article 11.1 of these *Retailer Distribution Service Rules*, *Apex* will update the projection and, if additional security is required based on the updated projection, require the *Retailer* to provide additional security within five (5) *Business Days* of *Apex's* request.
- (2) *Apex* requires *Retailers* to report any downgrading of their corporate bond rating to *Apex* within two (2) *Business Days* of said rating revisions, and must provide any additional security required as a result of the downgrading within five (5) *Business Days* of the downgrading.
- (3) A *Retailer* may also advise *Apex* of any upgrading of its credit rating. If the amount of security required from the *Retailer* is reduced as a result of the upgraded credit rating, *Apex* will return any financial deposit no longer required within 20 *Business Days* of being advised by the *Retailer* of the upgraded credit rating.
- (4) Subject to Article 7 of these *Retailer Distribution Service Rules*, if the *Retailer* fails to pay any amount billed, the *Retailer* grants to *Apex* a right of setoff for any amounts payable. *Apex* will apply all or any portion of the *Retailer's* security deposit to the unpaid amount. The *Retailer* will then be required to replenish the security deposit within five (5) *Business Days*.
- (5) Subject to Articles 7 and 11 of these *Retailer Distribution Service Rules*, if the *Retailer* fails to pay any amount billed or fails to present additional security as outlined herein, *Apex* reserves the right to suspend the provision of additional *Gas Distribution Service* to the *Retailer* or discontinue *Gas Distribution Service* entirely to the *Retailer*. *Apex* will provide the *Retailer* notice of discontinuance three (3) *Business Days* before *Apex* discontinues *Gas Distribution Service* to the *Retailer*. Upon discontinuance of *Gas Distribution Service* to the *Retailer* pursuant to this Article, *Apex* will assume the provision of the affected service *Apex* is reasonably

capable of providing.

- (6) A *Retailer* required to provide security in accordance with the *Natural Gas Billing Regulation, A.R. 185/2003* and these *Retailer Distribution Service Rules* must maintain that amount of security until all obligations of the *Retailer* under *Apex's Gas Distribution Tariff* are satisfied. A *Retailer* providing security, other than by means of a cash deposit held by *Apex*, must either ensure its security has no expiry date and cannot be terminated or must, at all times, ensure its security is automatically extended from year to year for successive periods of a minimum of one year from any expiration date thereof, unless *Apex* is notified in writing by prepaid registered mail not less than thirty (30) Days prior to any expiration date, the security will not be renewed for any such additional period (*Notice of Non-Renewal*). A *Retailer* who provides security other than a cash deposit, must ensure that its security is executable from an intermediary bank branch or office with a drawing location in Leduc or Edmonton, Alberta.
- (7) Upon receipt of a *Notice of Non-Renewal* or in the event of a *Letter of Credit Default*, *Apex* will notify the *Retailer in writing*, advising the *Retailer* that failure to provide *Apex* with alternate security meeting the requirements set out in the *Natural Gas Billing Regulation, A.R. 185/2003* within three (3) *Business Days* after the date of the notice will constitute a breach of the *Retailer's* obligation to maintain its security in accordance with section 8 of the *Natural Gas Billing Regulation, A.R. 185/2003* and an event of default under Article 14 of these *Retailer Distribution Service Rules*. If, after three (3) *Business Days*, *Apex* is not in receipt of such alternate security, the full amount of the *Retailer's* security determined in accordance with Article 11 of these *Retailer Distribution Service Rules* will become due and payable to *Apex* and *Apex* will be entitled to make demand or claim against the *Retailer's* security in accordance with Article 14.3.
- (8) In the event of a default by the *Retailer*, *Apex* is entitled to recover, as part of the *Gas Distribution Tariff*, any costs not covered by a claim against the *Retailer's* security under section 9 of the *Natural Gas Billing Regulation A.R. 185/2003*, as amended from time to time.

### 11.3 Confidentiality

All information provided by the *Retailer* in relation to its financial standing and designated by the *Retailer* as confidential will be treated as such under the Confidentiality Agreement between the *Retailer* and *Apex*. The terms and conditions of the Confidentiality Agreement are set out in the *Retailer Handbook*.

Notwithstanding the preceding paragraph, pursuant to section 10(3) of the *Code of Conduct Regulation*, a receiving party may disclose confidential information to any governmental, judicial, or regulatory authority requiring such confidential information in the reasonable exercise of its duties.

### 11.4 Costs

All costs associated with obtaining financial security and meeting prudential requirements under this Article are the responsibility of the *Retailer*.

### 11.5 Interest on Security Deposits

Interest on each *Retailer's* cash security deposit held by *Apex* will be calculated at the rate specified, from time to time, in the *Residential Tenancies Act, S.A. 2004, c.R-17.1*. Interest will be credited to the *Retailer* annually.

## ARTICLE 12 - MEASUREMENT

### 12.1 Provision and Ownership

The meters used by *Apex* to assess the level of *Gas Distribution Service* charges to the *Retailer* will be the same meters used to provide the *Customer Billing Information* to the *Retailer*. *Apex* will provide and install all meters for each *Point of Delivery* and each meter will remain the property of *Apex*.

### 12.2 Meter Reading

- (1) Billing will be based on actual or estimated usage. *Apex* reserves the right to assess a Special Meter Reading charge for non-routine reads, as set out in the *Special Charges Schedule*.
- (2) *Apex* will read the meter monthly or as often as reasonably necessary.
- (3) *Apex* will keep an accurate record of all meter readings for the purpose of billing the *Gas Distribution Services* provided.
- (4) *Apex* may elect to change the meter reading schedule for a site, providing advance notice to the *Retailer* as defined by *Rule 004*.
- (5) *Apex* is not required to accept *Customer* meter readings. Where *Customer* meter readings are provided, *Apex* reserves the right to decline the use of the *Customer* meter reading based on specific criteria.

### 12.3 Changes to Metering Equipment

Notwithstanding Article 3.7, should a *Retailer* request, or consent to, a *Customer* request for new metering equipment beyond the basic service, *Apex* will provide, install, test and maintain the required metering equipment. The metering equipment must be requested or consented to in writing by the *Customer* and meet *Apex's* requirements. The *Customer* will bear the cost of providing and installing the metering equipment and ongoing operating costs as set forth in the *Special Charges Schedule*.

### 12.4 Statutory Standards Apply

All measurements, calculations and procedures used in determining the quantities of Gas delivered at the *Point of Receipt* or at the *Point of Delivery* must be in accordance with the *Electricity and Gas Inspection Act R.S. 1985 c.E-4*, as amended, and all applicable regulations issued pursuant thereto.

### 12.5 Measuring Equipment

All measuring equipment, devices and materials required to measure the Gas at the *Point of Receipt* or at the *Point of Delivery* must be installed, maintained and operated by Apex, its agents or third parties acceptable to Apex and must be of standard manufacture and type approved by Industry Canada. The *Customer* may install and operate check measuring equipment provided it does not interfere with the operation of Apex's equipment or system.

### 12.6 Testing Measuring Equipment

The accuracy of the measuring equipment must be verified by standard tests and methods acceptable to Apex or upon the reasonable request of the *Retailer* or the *Customer*. Tests of such measuring equipment will be made at Apex's expense, however the *Retailer* or the *Customer* will bear the expense of tests made at their request if the inaccuracy is found to be within the limits of error allowed in the *Electricity and Gas Inspection Act, R.S.C., 1985, c.E-4*.

### 12.7 Facilities Interference

In the event the *Customer's* or the *Retailer's* facilities interfere with Apex's ability to provide accurate measurement at the *Point of Receipt* or the *Point of Delivery*, Apex may, immediately and without prior notice, cease to receive further deliveries of Gas at the *Point of Receipt* pending the remedying by the *Customer* or the *Retailer* of the cause of such interference to the satisfaction of Apex.

### 12.8 Use of TC Energy Measurements

Notwithstanding anything contained elsewhere in the *Retailer Distribution Service Contract*, Apex and the *Retailer* agree, at a *Point of Delivery* or at a *Point of Receipt*, being a *TC Energy/Apex* system interconnection, where *TC Energy's* measuring equipment (rather than Apex measuring equipment) is used or relied upon by Apex for measuring Gas delivered under the *Retailer Distribution Service Contract*, *TC Energy's* measurement and testing of Gas procedures will apply.

### 12.9 Forecast Quantities

The *Retailer* agrees to provide to Apex, for planning purposes, such forecasts of future quantities to be delivered under the *Retailer Distribution Service Contract* or the *Demand General Service Contract*, as Apex may request from time to time.

## ARTICLE 13 - ACCOUNT BALANCING

### 13.1 Retailer's Account

- (1) The *Retailer's Account* will be accumulated and recorded by *Apex* each *Day* and, without limitation, will include such items as *Gas* supply *Nominations*, *Retailer Load*, *Imbalance* quantity, opening *Imbalance* quantity, in-kind settlement quantity, *Retailer's* share of *Unaccounted-For Gas* and/or other adjustment quantities deemed appropriate as determined by *Apex* from time to time.
- (2) Each *Day* *Apex* will Forecast and Backcast *Retailer's* Load according to the practices specified in *Rule 028* and *Apex's* Retailer Handbook.
- (3) The *Retailer* will provide in kind, *Unaccounted-For Gas* each *Day* at the rate specified in *Rider H*.
- (4) *Apex* will make the *Account* available to the *Retailer* in the manner described in *Apex's* Retailer Handbook.

### 13.2 Exchange of Gas

The *Retailer* warrants it will make its *Gas* supply available in an account on *TC Energy* and *Apex* will make *Gas* available in the *Retailer's Account* by means of an exchange with said account on *TC Energy* and *Apex's Account* on the *Transmission System*, subject to the procedures described in the *Retailer Handbook*.

### 13.3 Daily Retailer's Account Imbalance

- (1) For each *Gas Day*, the *Tolerance Zone* applicable to each *Retailer's Account Imbalance* will be determined as specified on Schedule A.
- (2) The *Retailer* will, at all times, endeavor to maintain its daily *Account Imbalance* energy within the daily *Tolerance Zone*.
- (3) For each *Gas Day*, in the event the value of the *Retailer's Account* daily *Imbalance* energy is greater than/less than the value of the quantity specified by the positive/negative *Tolerance Zone*, the difference will be settled by *Imbalance Purchase/Sale* at the price specified on Schedule A.
- (4) The net quantity and dollars resulting from the *Imbalance Purchase* and *Imbalance Sales* transactions in Article 13.3(3), if any, will be invoiced to *Retailer* once per *Month*.

### 13.4 Retailer's Account Monitoring Rules

*Apex* will perform monitoring of the *Retailer's Account* according to the following:

- (1) Step 1
  - a) If there is no evidence of a *Nomination* in the *Retailer's Account* by 8:00 a.m. Mountain Time of the closing *Gas Day* (*Gas Day* 1), which has not been pre-authorized by *Apex*, *Apex* will attempt to contact the *Retailer* for

an explanation. If the *Retailer* indicates in writing (by e-mail) it intends to balance the *Account* within the *Account Balancing* timeline specified in the *Retailer Handbook*, then *Apex* will take no further action at Step 1. For this purpose, “balance the *Account*” means the *Retailer* provided sufficient *Gas* supply for *Gas Day 1*, whereby the resulting *Account Imbalance* on *Gas Day 1* was within the *Tolerance Zone* and no *Imbalance Purchase/Sale* was triggered.

b) If at (1)(a) above:

- i) *Apex*, with reasonable effort by telephone and e-mail, is unable to contact the *Retailer* by 8:30 a.m. Mountain Time; or
- ii) the *Retailer* has indicated an inability to make *Nominations* to its *Account* for *Gas Day 1*;

then the *Retailer’s Account* will be closed for the remainder of *Gas Day 1* and the rules related to *Imbalance Purchases/Sales* as stipulated in the *Retailer Distribution Service Rules* will be in effect for the *Retailer’s Account* on *Gas Day 1*.

(2) Step 2

a) If there is no evidence of a *Nomination* in the *Account* by 8:00 a.m. Mountain Time of the *Gas Day* following *Gas Day 1* (*Gas Day 2*), not pre-authorized by *Apex*, *Apex* will attempt to contact the *Retailer* for an explanation. This rule will also apply to those *Retailers* who made a commitment to balance their *Account* in Step 1, but did not fulfill that commitment, even if a nomination was made for *Gas Day 1*.

b) If at (2)(a) above

- i) *Apex*, with reasonable effort by telephone and e-mail, is unable to contact the *Retailer* by 8:30 a.m. Mountain Time; or
- ii) the *Retailer* has indicated an inability to make the *Nominations* to its *Account* for *Gas Day 2*;

then the *Retailer’s Account* will be closed for the remainder of *Gas Day 2* and the rules related to *Imbalance Purchases/Sales* as stipulated in these *Retailer Distribution Service Rules* will be in effect for the *Retailer’s Account* on *Gas Day 2*.

*Apex* will also provide electronic notice to the *Retailer* indicating the *Retailer* must take action to provide gas supply to its *Account* sufficient to alleviate *Apex’s* concerns by 8:30 a.m. Mountain Time of the next *Gas Day* (*Gas Day 3*), and *Apex* intends to permanently close the *Retailer’s Account* during *Gas Day 3*.

(3) Step 3

If there is no evidence of a *Nomination* in the *Retailer's Account* by 8:00 a.m. Mountain Time of the current *Gas Day* (*Gas Day 3*), not pre-authorized by *Apex*, *Apex* will attempt to contact the *Retailer* for an explanation. This rule will also apply to those *Retailers* who made a commitment to balance their *Account* in Step 1, but did not fulfill that commitment, even if a *Nomination* was made for *Gas Day 1*. If there is no evidence of a *Nomination* in the *Retailer's Account* by 8:30 a.m. Mountain Time, *Apex* will provide electronic notice to the *Retailer* indicating the *Retailer's Account* is permanently closed. *Apex* will commence de-enrolment of *Sites* associated with the *Retailer's Account* during *Gas Day 3* to first take effect on *Gas Day 4*.

The rules related to *Imbalance Purchases/Sales* as stipulated in these *Retailer Distribution Service Rules* will be in effect for the *Retailer's Account*.

(4) Step 4

*Apex* will continue to assess *Imbalance Purchases/Sales* for the *Retailer* who has defaulted until all the *Retailer's Sites* have been de-enrolled and successfully re-enrolled with the default supply provider. When all of the defaulting *Retailer's Sites* have been successfully enrolled with the default supply provider, the termination of *Gas Distribution Service* will be complete. *Apex* will continue to apply the rules related to *Imbalance Purchases/Sales* to the *Retailer's Account* as a result of adjustments related to settlement or other matters which occur after the *Retailer's Account* has been permanently closed.

(5) Step 5

In the event of non-payment on the part of the *Retailer*, and without limiting *Apex's* rights or remedies at law or in equity, *Apex* will have the right to recover any charges to a *Retailer* by claiming against the *Retailer's* or *Agent's* prudential (as stipulated in Article 11) used to secure due performance by the *Retailer* or *Agent* of its obligation under the *Retailer Distribution Service Contract*.

(6) Step 6

In the event *Apex* is notified by the *Retailer* in writing or by e-mail, or in the event *Apex* becomes aware the *Retailer* has declared itself or has been declared to be insolvent prior to the full three (3) days of *Account* monitoring described in this Article, *Apex* will have the right to discontinue *Gas Distribution Service* with one (1) *Business Days'* notice.

### 13.5 Termination of Retailer Service

- (1) These *Retailer Distribution Service Rules* will continue in force until all the *Retailer's Sites* have been de-enrolled and *Final Settlement* for the *Retailer's Account* has been completed, whereupon *Apex* will terminate the *Retailer's Account*. *Apex* will continue to transact in the *Yesterday Market* based on the B1 Backcast for the *Retailer* who has defaulted until all the *Retailer's Sites* have been de-enrolled. The rules related to *Imbalance Purchase/Sale* as stipulated in these *Retailer Distribution Service Rules* will be in effect.

- (2) Notwithstanding the provisions of Article 13.5(1) above, upon mutual agreement, the *Retailer* and *Apex* may enter into an arrangement to settle the outstanding energy amounts in the *Retailer's* terminating *Account*, including without limitation, the closing *Account Imbalance* and adjustments to the *Account* from *Gas Settlement*, in a manner different than is normally required under the provisions of these *Retailer Distribution Service Rules* and/or the *Retailer Handbook*.

### 13.6 Request for Additional Information

A *Retailer* may request additional settlement information above the basic service provisions specified in the *Retailer Handbook* or information previously provided by *Apex* if:

- a) the *Retailer* provides a written request to *Apex* outlining the purpose for the additional settlement information; and
- b) the additional settlement information applies only to the *Customers* of the *Retailer*.

Upon satisfaction of the above requirements, *Apex* will advise the *Retailer* in a written proposal of the type of work, time of delivery and charges necessary to provide the additional settlement information to the *Retailer*.

### 13.7 Liability

*Apex* will not be liable to any person for any damages, cost, expense, injury, loss or other liability of any kind whatsoever, or however caused, resulting directly or indirectly from its good faith performance of its responsibilities under the provisions of this Article. No express or implied warranties of any kind will apply to information or services provided by *Apex* to any person as part of such good faith performance, including without limitation implied warranties of fitness for a particular purpose.

## ARTICLE 14 - TERMINATION ON DEFAULT

### 14.1 Events of Default

An event of default under these *Retailer Distribution Service Rules* and the *Retailer Distribution Service Contract* will occur if either *Apex* or the *Retailer* (for purposes of this provision, the *Defaulting Party*):

- a) is the subject of a bankruptcy, insolvency or similar proceeding;
- b) makes an assignment for the benefit of its creditors;
- c) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- d) fails to pay the other party (*Non-Defaulting Party*) when payment is due, or to satisfy any other material obligation under these *Retailer Distribution Service Rules*

or the *Retailer Distribution Service Contract* including, without limiting the generality of the foregoing, fulfilling the prudential requirements as set forth in Article 11 in accordance with these *Retailer Distribution Service Rules* and fails to remedy the failure or satisfy the obligation, as the case may be, within three (3) *Business Days* after the receipt of written notice of the default or breach from the *Non-Defaulting Party*.

- e) fails to balance its *Account* in accordance with Article 13.

#### 14.2 Rights Upon Default

In an event of default, the *Non-Defaulting Party* will, subject to these *Retailer Distribution Service Rules* and any applicable regulatory requirements, be entitled to pursue any and all available legal and equitable remedies and terminate the *Retailer Distribution Service Contract*. Where the *Defaulting Party* is *Apex* or the *Retailer* and the *Non-Defaulting Party* elects to terminate, the *Retailer Distribution Service Contract* is terminated without any liability or responsibility whatsoever, except for obligations arising prior to the date of termination. The *Non-Defaulting Party* will provide written notice to the *Defaulting Party* advising as to the nature of any default and of its intention to terminate service under the *Retailer Distribution Service Contract* and these *Retailer Distribution Service Rules*.

#### 14.3 Recourse to Security Upon the Retailer Default

In addition to any other rights and remedies set out in these *Retailer Distribution Service Rules*, in an event of default by the *Retailer*, other than a default in payment addressed under section 9 of *Natural Gas Billing Regulation, A.R. 185/2003*, the full amount of the *Retailer's* security determined in accordance with Article 11 of these *Retailer Distribution Service Rules* will become due and payable to *Apex* and *Apex* will be entitled to make demand or claim against the *Retailer's* security for the full amount secured. All funds received by *Apex* in respect of such claim will be retained by *Apex* and applied against the *Retailer's* obligations until such time as all of the *Retailer's* obligations have been determined and satisfied. Any balance remaining after satisfaction of the *Retailer's* obligations will be returned to the issuing party of the security for the benefit of the *Retailer*.

#### 14.4 Termination on Default

If any one or more of the parties to the *Retailer Distribution Service Contract* fails to perform any of the covenants or obligations imposed upon it under and by virtue of the *Retailer Distribution Service Contract* (the *Defaulting Party*), then in any such event, the other party to the *Retailer Distribution Service Contract* (the *Non-Defaulting Party*) may, at its option, terminate the *Retailer Distribution Service Contract* insofar, and only insofar, as the *Retailer Distribution Service Contract* pertains to the *Defaulting Party*. To terminate the *Retailer Distribution Service Contract* pursuant to this provision, the *Non-Defaulting Party* will cause a notice in writing or e-mail to be given to the *Defaulting Party* advising as to the nature of any default and declaring it to be the intention of the *Non-Defaulting Party* to terminate the *Retailer Distribution Service Contract*.

### ARTICLE 15 - IMPAIRED DELIVERIES

## 15.1 Impaired Deliveries

- (1) If, by reason of the causes set out in this Article, *Apex* is unable, in whole or in part, to deliver the Gas provided for in the *Retailer Distribution Service Contract*, then *Apex* will be relieved of liability for not delivering such quantities and *Apex* may curtail or discontinue deliveries of Gas under the *Retailer Distribution Service Contract* during the discontinuance and to the extent of the inability. However, *Apex* will endeavour to give reasonable notice of any curtailment or discontinuance of deliveries arising by virtue of such causes and will promptly endeavour to remedy the cause of any curtailment or discontinuance of deliveries as soon as reasonably possible.
- (2) Such notice will specify *Apex's* estimate of the duration of any such curtailment or discontinuance of deliveries under the *Retailer Distribution Service Contract*.
- (3) The causes referred to above are the necessity, in *Apex's* sole opinion, of making repairs, modifications or improvements to the *Gas Distribution System*. However, *Apex* will, when practicable, endeavour to effect such modifications or improvements, not emergency in nature, at a time and in a manner that does not unduly interfere with or interrupt deliveries of Gas.

## ARTICLE 16 - LIABILITY AND INDEMNITY

### 16.1 Indemnity

- (1) Each party (as applicable, the Indemnitor) will indemnify and hold harmless the other party and its directors, officers, employees, agents and representatives (Indemnitee(s)) from and against any direct damages, injuries, losses and other liabilities claimed against the Indemnitee or any of them, and all related costs and expenses (including reasonable legal fees) suffered or incurred by any of them in relation to any claim, cause of action, action, suit or proceeding by a third party (Claim) which arises from damage to property or injury to or death of persons resulting from the Indemnitor's failure to perform its obligations under these *Retailer Distribution Service Rules* which failure is caused by the negligence or willful act of the Indemnitor or any of its directors, officers, employees, agents or representatives acting within the scope of their authority or employment. The indemnity under this Article will be limited to an amount in proportion to the degree to which the Indemnitor or its directors, officers, employees, agents or representatives acting within the scope of their authority or employment are at fault. For the purpose of this Article "willful act" means any act or omission which is an intentional tort or an intentional breach of any obligations under these *Retailer Distribution Service Rules*.
- (2) In the event that an Indemnitee is entitled to and desires to assert its right to indemnification from an Indemnitor under this Article such Indemnitee will give the Indemnitor prompt notice of the Claim, which will describe the Claim in reasonable detail and will indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnitee. The failure to promptly notify the Indemnitor hereunder will not relieve the Indemnitor of its obligations

hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.

- (3) Subject to Article 16.1(4) hereof, if the Indemnitor delivers to the Indemnitee a written acknowledgement of its unconditional and irrevocable obligation to indemnify the Indemnitee under Article 16.1(1) in respect of:
  - (a) all of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the existence of such obligation to indemnify is made known by the Indemnitor to the third party claimant (and, if applicable, to the court or other tribunal determining the Claim), the Indemnitee will make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to the particular Claim and the Indemnitor will be entitled, at its option, to take carriage of the defense of the Claim by its own counsel and, if it elects to do so, the Indemnitee will cooperate with the Indemnitor to the fullest reasonable extent in the defense, settlement or compromise of the Claim; or
  - (b) some, but less than all, of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the Indemnitee is of the opinion that the Indemnitor's interests are not in conflict with its own, the Indemnitee will make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to that portion of the Claim in respect of which the Indemnitor has an obligation to indemnify the Indemnitee and consult with the Indemnitor in respect thereof.

The Indemnitee will not make any admission of the liability regarding, or settle or compromise, that portion of the Claim in respect of which the Indemnitor has acknowledged its obligation to indemnify the Indemnitee without the written consent of the Indemnitor, which consent will not be unreasonably withheld.

- (4) The provisions of Article 16.1(1) hereof will not apply in respect of any Claim to which the Indemnitor is, or may reasonably be expected to be, a party and where the Indemnitee is asserting legal defenses in relation to the Claim that conflict with legal defenses being asserted by the Indemnitor.
- (5) Except to the extent to which either party is required to indemnify the other party (and those other persons specified in this Article 16) by the express terms of Article 16, neither party, nor its directors, officers, agents, employees, and representatives, will be liable to the other party for any damages, costs, expenses, injuries, losses, or liabilities suffered or incurred by the other party, its directors, officers, employees, agents and representatives howsoever and whenever

caused, and each party, for itself and as agent for its directors, officers, agents, employees and representatives hereby forever releases the other party, its directors, officers, agents, employees and representatives from any liability or obligation in respect thereof. For greater certainty, neither party will be limited in a claim against the other for specific performance or other equitable relief in relation thereto, or direct damages only and related costs and expenses (including reasonable legal fees), arising from a breach of these Terms and Conditions.

## 16.2 Consequential Loss

Notwithstanding anything to the contrary contained in these *Retailer Distribution Service Rules*, neither party will be liable to the other party, and Apex will not be liable to the *Customer* with respect to matters for which the party is acting as agent for the *Customer*, for any damage, cost, expense, injury, loss or other liability of an indirect, special or consequential nature suffered by the other party or claimed by any third party against the other party which arises due to such party's failure to perform its obligations under these *Retailer Distribution Service Rules* or for any other reason (including negligence on its part or on the part of any person for whose acts it is responsible), howsoever and whensoever caused, and whether arising in contract, negligence or other tort liability, strict liability or otherwise; and without limiting the generality of the foregoing, damage, injury or loss of an indirect or consequential nature will include loss of revenue, loss of profits, loss of production, loss of earnings, loss of contract, cost of purchased or replacement capacity and energy, cost of capital and loss of the use of any segment of the *Gas Distribution System* or property owned, operated, leased or used by the other party.

## 16.3 Release

Subject to Section 16.1 and 16.2, Apex, its directors, officers, agents, employees and representatives, (Apex Parties), will not be liable to the *Customer*, its directors, officers, agents, employees and representatives (Customer Parties) for any damages, costs, expenses, injuries, losses, or liabilities suffered or incurred by the Customer Parties or any of them, howsoever and whenever caused, and Customer Parties hereby forever releases each of the Apex Parties from any liability or obligation in respect thereof.

## 16.4 Apex Not Liable to Customer

For greater certainty, Apex shall not be liable to a *Customer* Party for any damages of any kind:

- a) caused by or arising from Apex's conduct in compliance with or in breach of, or as permitted by, these *Retailer Distribution Service Rules*, the *Natural Gas Utility Service Rules* or other agreement with a *Customer*, or any contractual, legal or regulatory requirements related to service provided to *Retailers*;
- b) caused to the *Customer* and arising from any failure of a *Retailer* to comply with these *Retailer Distribution Service Rules*, any agreement with Apex relating to *Gas Distribution Service* or for any damages caused by or arising from equipment installed or actions taken by a *Retailer*;
- c) caused by or arising from a *Retailer's* failure to perform any commitment to the *Customer*, including but not limited to the *Retailer's* obligation, including its

obligation under Part 2.1 of the *Act*, to provide retail services including *Gas Distribution Service* to the *Customer*, or

- d) caused by or resulting from any acts, omissions or representations made by a *Retailer* in connection with soliciting *Customers* for *Gas Distribution Service* or performing any of the *Retailer's* functions in providing retail *Gas Services* to *Customers*.

## ARTICLE 17 - FORCE MAJEURE

### 17.1 Effect of Force Majeure on Breach

Subject to the other provisions of this Article, if either party to the *Retailer Distribution Service Contract* fails to observe or perform any of the covenants or obligations herein imposed upon it and such failure is occasioned by, or in connection with, or in consequence of Force Majeure, as hereinafter defined, such failure will be deemed not to be in a breach of such covenants or obligations.

*Retailer* will not be relieved by Force Majeure as described in this Article 17 from the obligation to pay the charges set forth pursuant to this Article unless Force Majeure has been invoked by *Apex*.

### 17.2 Meaning of Force Majeure

For the purposes of the *Retailer Distribution Service Rules*, "Force Majeure" means any cause, other than financial, beyond the control of the party claiming suspension and the cause could not have been prevented or overcome by due diligence, including, but not limited to:

- a) acts of God, such as lightning, earthquakes, storms, floods, fires, landslides, and washouts;
- b) strikes, lockouts, or other industrial disturbances;
- c) acts of the Queen's enemy, sabotage, wars, blockades, insurrections, riots, epidemics, civil disturbances, arrests, and restraints;
- d) explosions, breakages of, or accidents to machinery or lines of pipe;
- e) hydrate obstructions of lines of pipe and equipment;
- f) temporary failures of *Gas* supply;
- g) freezing of wells or delivery facilities, well blowouts, and craterings; and
- h) the Orders of any court or governmental authority.

### 17.3 Exceptions to Force Majeure

- (1) Notwithstanding Article 17.2, a Decision, Direction, or Order made by the *Commission* in the normal course of it exercising its authority to establish the appropriate revenue requirement or rates of the parties to this agreement will not be considered an event of Force Majeure.
- (2) Neither party is entitled to the benefit of the provisions of Article 12.1 under any of the following circumstances:
  - a) to the extent the failure was caused by the sole negligence of the party claiming suspension;
  - b) to the extent the failure was caused by the party claiming suspension having failed to remedy the condition where it is within that party's ability, alone, to do so and to resume the performance of such covenants or obligations with reasonable dispatch;
  - c) if the failure was caused by lack of funds or with respect to the payment of any amount or amounts then due under the *Retailer Distribution Service Contract*; or
  - d) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining the occurrence was in the nature of Force Majeure and would affect the claiming party's ability to observe or perform any of its covenants or obligations under the *Retailer Distribution Service Contract*, the party claiming suspension necessarily gives to the other party notice, either in writing or by electronic mail, advising that such party is unable, by reason of Force Majeure (the nature of which to be specified in the notice), to perform the particular covenants or obligations.

#### 17.4 Notice of remedy

The party claiming relief from liability under the provisions of this Article 17 will promptly give the other party notice of the Force Majeure including full particulars thereof and will promptly give the other party notice when the Force Majeure event ceases to prevent performance pursuant to these *Retailer Distribution Service Rules*.

#### 17.5 Obligation to Remedy

The party claiming relief from liability under the provisions of this Article 17 will promptly remedy the cause and effect of the Force Majeure insofar as it is reasonably able to do so.

#### 17.6 Labour Disputes

Notwithstanding anything to the contrary in this Article, expressed or implied, the parties agree the settlement of strikes, lockouts and other industrial disturbances will be entirely within the discretion of the particular party involved in the labour dispute and such party may make settlement of the labour dispute at such time and on such terms and conditions as it may deem advisable. No delay in making such settlement will deprive such party of

the benefit of this Article 17.

## ARTICLE 18 - DISPUTE RESOLUTION

### 18.1 Resolution by Apex and the Retailer

If any dispute between *Apex* and a *Retailer* arises at any time in connection with these *Retailer Distribution Service Rules*, *Apex* and the *Retailer*, acting reasonably and in good faith, will use all reasonable efforts to resolve the dispute as soon as possible in an amicable manner.

### 18.2 Resolution by Arbitration

If any dispute has not been resolved pursuant to Article 18.1 hereof within 30 days after notice from *Apex* or the *Retailer* to the other of its desire to have the dispute resolved, then the dispute will be resolved pursuant to Articles 18.3 to 18.11 hereof. *Apex* and the *Retailer* will abide by the terms of any award rendered by the arbitrator appointed hereunder without delay.

### 18.3 Arbitrators

All disputes or differences between *Apex* and a *Retailer* in connection with these *Retailer Distribution Service Rules* will be referred (unless *Apex* and the *Retailer* concur in the appointment of a single arbitrator) to a board of arbitrators consisting of one (1) arbitrator to be appointed by each of *Apex* and the *Retailer* who will, by instrument in writing, appoint a third arbitrator immediately after they are themselves appointed. Notwithstanding the foregoing, any disputed matters between *Apex* and a *Retailer* relating to an order or direction made or approved by the *AUC* or falling within the exclusive jurisdiction of the *AUC*, will be referred to the *AUC* for resolution.

### 18.4 Failure to Concur

*Apex* and a *Retailer* will be deemed to have failed to concur in the appointment of a single arbitrator if such an arbitrator will not have been appointed within fifteen (15) days after the serving by either *Apex* or the *Retailer* on the other of notice requesting it to concur in the appointment of such an arbitrator.

### 18.5 Refusal to Appoint an Arbitrator

If either *Apex* or the *Retailer* will neglect or refuse to appoint an arbitrator within fifteen (15) days after the other party (provided such other party has appointed its arbitrator) has served *Apex* or the *Retailer*, as the case may be, with notice to make the appointment, the party who has appointed its arbitrator will be entitled to apply, upon notice to the other party, to a Justice of the Court of Queen's Bench of Alberta to appoint an arbitrator for the party in default.

### 18.6 Failure to Appoint a Third Arbitrator

If the arbitrators appointed by *Apex* and the *Retailer* have not, within fifteen (15) days after their appointment or the appointment of the arbitrator last appointed, as the case may be, appointed a third arbitrator, either *Apex* or the *Retailer* will be entitled to apply upon notice to the other party to a Justice of the Court of Queen's Bench of Alberta to appoint such an arbitrator.

### **18.7 Technical Competence**

Any arbitrator appointed under the provisions of this Article whether by concurrence of *Apex* and the *Retailer*, by either party, by the arbitrators, or by a Justice of the Court of Queen's Bench of Alberta will, in the opinion of the persons making such appointment, be possessed of such technical or other qualifications as may be reasonably necessary to enable him to properly adjudicate upon the dispute or difference.

### **18.8 Compensation of Arbitrators**

Each party will be responsible for the costs of the arbitrator appointed by it hereunder. The costs of the third arbitrator will be divided evenly between the parties.

### **18.9 Application of the Arbitration Act (Alberta)**

Except as herein modified, the provisions of the *Arbitration Act, R.S.A., 2000, c. A-43*, as amended from time to time, will apply to any arbitration proceeding.

### **18.10 Decisions Binding**

A decision of the single arbitrator or the majority of the three arbitrators named or appointed will be final and binding upon each of the parties to the dispute or difference.

### **18.11 Continuity of Service**

All performance and payments requirements under these *Retailer Distribution Service Rules* by *Apex* and the *Retailer* will continue during the dispute resolution proceedings contemplated by this Article provided, in the case of any such proceedings pertaining to amounts payable under these *Retailer Distribution Service Rules*, any payments or reimbursements required as a result of the proceedings will be effective as of a date to be determined in such proceedings and interest will be paid on those amounts by the party required to make the payment or reimbursement on the amount at the rate specified from time to time in the *Residential Tenancies Act, R.S.A. 2000, c.R.-17*, but not less than 2.5% from the date so determined until paid.

## **ARTICLE 19 - MISCELLANEOUS MATTERS**

### **19.1 Retailer Distribution Service Rules Prevail**

No representation or commitment inconsistent with these *Retailer Distribution Service Rules* has any effect unless approved by the *Commission*.

### **19.2 General Laws Apply**

The *Retailer Distribution Service Rules* and the *Retailer Distribution Service Contract* are subject to all applicable present and future laws, rules, regulations and orders of any legislative body or duly instituted authority now or hereafter having jurisdiction. Apex will not violate, directly or indirectly, or become a party to a violation of any requirement of any applicable federal, provincial, or local statute, regulation, bylaw, rule, or order to provide *Retailer Distribution Service* to the *Retailer* (or a *Customer* of the *Retailer*). Apex's obligation to provide *Retailer Distribution Service* is subject to the condition all requisite governmental and regulatory approvals for the provision of such *Retailer Distribution Service* will have been obtained and will be maintained in force during such period of *Retailer Distribution Service*.

### 19.3 No Waiver

The failure of either party to insist on strict performance of any provisions of these *Retailer Distribution Service Rules* or a *Retailer Distribution Service Contract*, or to take advantage of any of its rights hereunder, will not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which will remain in full force and effect. No term or condition of these *Retailer Distribution Service Rules* or a *Retailer Distribution Service Contract* will be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the party claimed to have waived or consented to excuse.

### 19.4 No Assignment

Neither Apex nor the *Retailer* may assign any of its rights or obligations under these *Retailer Distribution Service Rules* or the *Retailer Distribution Service Contract* without obtaining (a) any necessary regulatory approval(s); and (b) the prior written consent of the non-assigning party, which consent may not be unreasonably withheld. No assignment will relieve the assigning party of any of its obligations under these *Retailer Distribution Service Rules* or the *Retailer Distribution Service Contract* until such obligations have been assumed by the assignee. Any assignment in violation of this Article will be void. However, Apex may assign any or all of its rights and obligations under these *Retailer Distribution Service Rules* and the *Retailer Distribution Service Contract*, without the *Retailer's* consent, to any entity succeeding to all, or substantially all, of the assets of Apex, if the assignee agrees, in writing, to be bound by the terms of the *Retailer Distribution Service Rules* and *Retailer Distribution Service Contract* and if any necessary regulatory approvals are obtained.

### 19.5 Applicable Laws

The *Retailer Distribution Service Rules* and the *Retailer Distribution Service Contract* between Apex and the *Retailer* will be governed by the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta, without regard to principles of conflicts of law. Any lawsuit arising in connection with these *Retailer Distribution Service Rules* and the *Retailer Distribution Service Contract* will be brought in the courts of the Province of Alberta.

## ARTICLE 20 - NOTICE

## 20.1 Notice in Writing

Unless otherwise stated herein, all notices, demands or requests required or permitted under these *Retailer Distribution Service Rules* or a *Retailer Distribution Service Contract* will be in writing and will be personally delivered or sent by courier-service or electronic transmission addressed as follows:

- (a) If to the *Retailer*, to the address and the addressee set out in *the Retailer Distribution Service Contract* between the *Retailer* and *Apex*.
- (b) If to *Apex* to:  
Apex Utilities Inc.  
5509-45 Street,  
Leduc, AB T9E 6T6  
Attention: Director, Regulatory  
Fax: (780) 986-5220

Notice received after the close of the *Business Day* will be deemed received on the next *Business Day*.

## 20.2 Delivery of Notice

- (1) Any notice may be given by mailing the same, postage prepaid, in an envelope properly addressed to the person to whom the notice is given and will be deemed to be received four (4) *Business Days* after the mailing of the notice.
- (2) Any notice may also be given by electronic transmission addressed to the person to whom such notice is given, at such person's address for notice and any such notice so served will be deemed to have been given one (1) *Business Day* after transmission.
- (3) Any notice may also be delivered by hand to the person, or his representative, to whom such notice is given at such person's address for notice and such notice will be deemed to have been given when received by such person or his representative.
- (4) Any notice may also be given by telephone followed immediately by letter, or other means of electronic transmission. Any notice so given will be deemed to have been given of the date and time of the telephone notice.

## 20.3 Disruption of Mail

In the event of disruption of regular mail, every payment will be delivered and every notice, demand, statement, or bill will be given by one of the alternative means set out in this Article.

## SCHEDULE A - IMBALANCE PURCHASES/SALES CHARGES

### 1.0 Tolerance Zone Percentage

The percentage used to calculate each *Retailer's Account Tolerance Zone* is  $\pm 4\%$ .

### 2.0 Tolerance Zone

The daily *Tolerance Zone* for each *Gas Day*, applicable to each *Retailer's Account Imbalance*, is based on the result of multiplying the *Retailer's* daily *Backcast* by the absolute value of the *Tolerance Zone* percentage (*Tolerance Zone* determinant):

- a) If the result is 0 (zero), the daily *Tolerance Zone* quantity will be 0 GJ;
- b) If the result is greater than 0, and less than or equal to 50, the daily *Tolerance Zone* quantity will be  $\pm 50$  GJ;
- c) If the result is greater than 50, and less than or equal to 100, the daily *Tolerance Zone* quantity will be  $\pm 100$  GJ;
- d) If the result is greater than 100, and less than or equal to 150, the daily *Tolerance Zone* quantity will be  $\pm 150$  GJ;
- e) If the result is greater than 150, and less than or equal to 200, the daily *Tolerance Zone* quantity will be  $\pm 200$  GJ;
- f) If the result is greater than 200, the daily *Tolerance Zone* quantity will be  $\pm 400$  GJ.

### 3.0 Imbalance Purchase/Sale Price

The *Imbalance Purchase/Sale* price applicable to each *Retailer Account* is:

- a) For an *Imbalance Purchase*, the price used by *Apex* will be the lowest *Same Day Market* or *Yesterday Market* trade price reported on the *NGX* for the *Gas Day*, as reported by the *NGX* as the "ICE NGX AB-NIT Same Day INDEX" and "ICE NGX AB-NIT Yesterday Index" obtained from the "ICE NGX Price Indices" website.
- b) For an *Imbalance Sale*, the price used by *Apex* will be the highest *Same Day Market* or *Yesterday Market* trade price that occurs on the *NGX* for the *Gas Day* as reported by the *NGX* as the "ICE NGX AB-NIT Same Day Index" and "ICE NGX AB-NIT Yesterday Index" obtained from the "ICE NGX Price Indices" website.

#### 4.0 Change to Tolerance Zone Percentage and Minimum Energy Tolerance Zone

In the event *TC Energy* determines its pipeline tolerance level needs be increased or decreased and as a result, the *TC Energy* transmission balance zone is changed, *Apex* will revise the daily *Tolerance Zone* as follows:

TC Energy Balance Zone	Apex Account Tolerance on TC Energy		Tolerance Zone Determinant > 0 and <= 50		Tolerance Zone Determinant > 50 and <= 100		Tolerance Zone Determinant > 100 and <= 150		Tolerance Zone Determinant > 150 and <= 200		Tolerance Zone Determinant > 200	
	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max
-4% +4%	-2,000	2,000	-50	50	-100	100	-150	150	-200	200	-400	400
-3% +4%	-1,500	2,000	-38	50	-75	100	-113	150	-150	200	-300	400
-2% +4%	-1,000	2,000	-25	50	-50	100	-75	150	-100	200	-200	400
-1% +4%	-500	2,000	-13	50	-25	100	-38	150	-50	200	-100	400
0% +4%	0	2,000	0	50	0	100	0	150	0	200	0	400
-4% +3%	-2,000	1,500	-50	38	-100	75	-150	113	-200	150	-400	300
-4% +2%	-2,000	1,000	-50	25	-100	50	-150	75	-200	100	-400	200
-4% +1%	-2,000	500	-50	13	-100	25	-150	38	-200	50	-400	100
-4% 0%	-2,000	0	-50	0	-100	0	-150	0	-200	0	-400	0

A change to the *Tolerance Zone* as a result of a change in the *Tolerance Zone* percentage and/or change in the *Apex* account tolerance on *TC Energy* will be in effect for the same *Gas Days* as the corresponding *TC Energy* Balance Zone change.