



**NOTICE OF PROPOSAL TO AMEND A CODE**

**PROPOSED AMENDMENTS TO AFFILIATE RELATIONSHIPS CODE FOR  
ELECTRICITY DISTRIBUTORS AND TRANSMITTERS**

**BOARD FILE NO: RP-2007-0662**

**BY E-MAIL AND WEB POSTING**

**To: All Licensed Electricity Distributors  
All Licensed Electricity Transmitters  
All Participants in Consultation Process RP-2007-0662  
All Other Interested Parties**

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The Ontario Energy Board (the "Board") is giving notice under section 70.2 of the *Ontario Energy Board Act, 1998* (the "Act") of proposed amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters (the "Electricity ARC" or the "Code").

**I. Background**

**A. The Electricity ARC**

The Electricity ARC was issued by the Board on April 1, 1999, and governs the conduct of licensed electricity transmitters and distributors ("utilities") as that conduct relates to their respective affiliates. Since its issuance, the Electricity ARC has been amended only once, to defer the requirement that at least one-third of the Board of Directors of a municipal utility be independent from any affiliate.

## **B. Ontario Utilities and their Affiliates**

The affiliate relationships of Ontario's utilities vary. Approximately 19 distributors have only one affiliate - the municipal shareholder or a holding company. The remaining distributors have one or more other affiliates that provide services to or for the distributor or affiliates that engage in other business activities, including energy-related services, telecommunication services and generation. Eighteen distributors have little or no internal staff and have outsourced largely all of their operations to an affiliate.

The services provided by distributor affiliates include customer billing, meter maintenance, hot water heater rentals, street light maintenance, energy management and electrical facility construction and maintenance. In some other cases, an affiliate provides more limited distribution-related functions, such as electrical facility construction or metering services. Some holding companies provide corporate services, such as accounting or human resources functions, to their distributor affiliate. While eight distributor affiliates hold a retailer licence, none appear to be currently active as electricity retailers. Three distributor affiliates hold natural gas marketer licences. One is not currently active and the other two are municipalities that also operate the gas distribution system in their respective territories.

## **C. Recent Electricity ARC Activity**

The last two years in particular have seen increased activity in relation to the Electricity ARC. The Compliance Office has reviewed the affiliate relationships of several distributors. Through these reviews, a number of compliance concerns were identified and communicated individually to the distributors in question. On July 10, 2006, the Compliance Office issued Compliance Bulletin 200604 to provide all licensed distributors with an overview of the views and expectations of the Board's Chief Compliance Officer regarding key provisions of the Electricity ARC.

In addition, there has been ongoing change in the structure and operation of the electricity sector.

Some distributors have expressed concerns about the continuing relevance and appropriateness of the Electricity ARC in today's legislative and regulatory environment. An application filed by the Electricity Distributors Association regarding the Electricity ARC is also currently pending before the Board.

To facilitate discussion of issues pertaining to the Electricity ARC, a Board staff Research Paper was issued for comment on June 15, 2007. The Research Paper provided background on the development of the Electricity ARC, summarized the current status of Ontario utility affiliate relationships and identified some of the concerns regarding the Electricity ARC that have been raised recently. The Research Paper considered major affiliate relationship issues identified from a review of other North American jurisdictions and the Board's 2004 review of the Affiliate Relationships Code for Gas Utilities (the "Gas ARC"), and considered the Electricity ARC relative to those issues.

The Board received 23 comments on the staff Research Paper from a variety of

stakeholders, including distributors, electricity retailers, ratepayer groups and business groups whose members compete with some distributor affiliates. Those comments are available on the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) on the "Affiliate Relationships Code for Electricity Distributors and Transmitters" webpage on the "Key Initiatives & Consultations" portion of the "Industry Relations" section of the website.<sup>1</sup>

The comments received were diverse in nature, and stakeholder-wide consensus on key points was limited. Representatives of the same stakeholder group (distributor, ratepayer, retailer/marketer and other competing businesses) did not necessarily have the same view on, or take the same approach to, any given issue. Broadly speaking, however, distributors tended to favour less restrictive or more flexible rules. Illustrative of this approach are the comments of the Electricity Distributors Association, which were expressly supported in the comments submitted by a number of distributors. Ratepayers, retailers/marketers and businesses that compete with some distributor affiliates tended to favour the status quo or more rigorous rules. The comments of the Electrical Contractors Association of Ontario are illustrative of this approach.

Both the staff Research Paper and the comments submitted in response to it have been of assistance to the Board in considering whether and what amendments to the Electricity ARC may be warranted at this time.

## **II. Proposed Amendments to the Electricity ARC**

The Board believes that the Electricity ARC remains relevant to the Ontario electricity sector. As confirmed by the staff Research Paper, Ontario's Electricity ARC is not dissimilar to that of affiliate relationships codes in other North American jurisdictions.

Both the staff Research Paper and the comments received in response to that document identified areas where change could or should be considered. Some of the comments received from representatives of electricity distributors in particular advocated the need for change based on the evolution of the industry (including the limited extent of electricity retail affiliates), revisions to the Act or both. In some of these cases, it was also argued that the interpretation and application of the Electricity ARC exceeds the scope of the Board's mandate under the Act.

The Board is cognizant of the changes that have occurred in the electricity sector since 1999. None of those changes have caused the Board to conclude that a fundamental shift in approach or principles is desirable in relation to the Electricity ARC.

However, the Board does believe that certain amendments to the Electricity ARC are warranted at this time. The Board is proposing a number of amendments to the Electricity ARC. Some are intended to provide greater clarity, others to allow distributors an additional measure of flexibility and yet others to ensure that ratepayers are more clearly protected from the activities of utilities relative to their affiliates. In addition, the Board is taking this opportunity to propose amendments of a purely "housekeeping" nature.

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<sup>1</sup> [www.oeb.gov.on.ca/html/en/industryrelations/ongoingprojects\\_arc.htm#20070809](http://www.oeb.gov.on.ca/html/en/industryrelations/ongoingprojects_arc.htm#20070809)

The Board's approach to amendments to the Electricity ARC as reflected in this Notice has been a purposive one. The Board has focused on identifying the potential harms that it believes are within its mandate to address and that are properly addressed through rules that govern affiliate relationships. This in turn informed the Board's review of the purpose or objectives of the Electricity ARC. The Board then considered each provision of the Electricity ARC against those objectives, to determine whether the provision remains necessary, whether it needs to be clarified or strengthened, or whether it can be relaxed or even eliminated.

A summary of the more significant proposed amendments to the Electricity ARC is set out below. The text of the proposed amendments is set out in Attachment A to this Notice. For convenience, Attachment B contains a comparison version of the Electricity ARC which shows all of the proposed amendments, and Attachment C contains a clean copy of the Electricity ARC that integrates all of the proposed amendments.

#### **A. Section 1.1 - Purpose of the Code**

The "Purpose" section of the Electricity ARC (section 1.1) serves an important role as the expression of the Board's objectives in establishing the provisions of the Code. Wherever possible, the Board seeks to have the clearest expression of those objectives. Based on the comments received, the Board has concluded that greater clarity is required in this section, and therefore proposes to amend it as described below.

Currently, the Electricity ARC has a "purpose" statement, a list of "principal objectives" and a list of what the Code is intended to accomplish. The Board believes that greater clarity would result from a simpler approach that consists of a listing of objectives. As is currently the case, each provision of the Electricity ARC finds a basis in one or more of the objectives, and some provisions are supported by more than one objective.

In terms of the objectives themselves, the Board is proposing to eliminate the reference to "enhance the development of a competitive market" as one of the principal objectives of the Electricity ARC. Experience has demonstrated that this reference is needlessly creating confusion regarding the interpretation and application of the Electricity ARC. In addition, the Board no longer has as a statutory objective the facilitation of competition in the sale and generation of electricity, and this proposed amendment is consistent with that legislative change. Instead, the Board is proposing to amend section 1.1 in a manner that more clearly articulates the harm that the Electricity ARC is intended to protect against. More specifically, the Board is proposing to amend that section by adding the objective of "preventing a utility from acting in a manner that provides an unfair business advantage to an affiliate that is an energy service provider".

The comments received on the staff Research Paper accept the authority of the Board to address, through the Electricity ARC, the impact of a utility's actions in relation to the retail electricity and gas markets. However, the comments received from a number of distributor representatives have challenged the authority of the Board to address that impact in relation to other markets, often citing the elimination of the statutory objective of facilitating competition. The Board does not agree that its mandate is restricted to that degree, nor does it believe that the elimination of the statutory objective of

facilitating competition in the sale and generation of electricity is dispositive of the issue.

Under the Act, the Board has broad authority to prescribe conditions under which a person may engage in transmission or distribution activities. This specifically includes a similarly broad authority to prescribe rules governing the conduct of a transmitter or distributor as that conduct relates to its affiliates. This latter authority is not limited to the conduct of utilities in relation to affiliates that are electricity retailers or gas marketers, nor is it limited to conduct that has or can have a specified effect (such as cross-subsidization). The Board also has as a statutory objective to promote economic efficiency and cost effectiveness not only in relation to the transmission, distribution and sale of electricity, but also in relation to electricity generation and demand management. The Board cannot agree that preventing transmitters and distributors from using their monopoly position in a manner that is or can be harmful to the interests of customers is beyond the scope of its authority. Harm in this context can take a variety of forms, from customer confusion to reducing alternative competitive offerings available to (and increasing prices payable by) ratepayers for different products or services. In the more specific context of affiliate relationships, the Board therefore believes that its role encompasses, at a minimum, regulating utility conduct that can provide an unfair business advantage to an affiliate that is involved in energy or energy-related market activities. These are activities that are captured by the Electricity ARC definition of “energy service provider”, which are all either referred to explicitly in the statutory objective of economic efficiency and cost effectiveness or are activities that are closely linked with utility activities.

The Board is also proposing to amend section 1.1 of the Electricity ARC to more clearly identify a further objective; namely, that of “preventing customer confusion that may arise from the relationship between a utility and its affiliate”. This reflects the Board’s view that utilities should not, either directly or indirectly through their relationship with an affiliate, confuse customers as to the distinction between the regulated monopoly service provider and another company.

These proposed amendments clarify and make more explicit some of the underlying objectives of the Electricity ARC.

The Board has considered whether this section of the Electricity ARC should be amended to add a further objective relating to utility efficiency. Based on the comments received in response to the staff Research Paper, there appears to be a general consensus that utility efficiency should not be the primary objective of the Electricity ARC. However, stakeholders differed in their views as to the need for or desirability of codifying utility efficiency as an objective of the Electricity ARC. The Board does not believe that the addition of a reference to utility efficiency or cost effectiveness as an objective of the Electricity ARC is necessary. Promoting economic efficiency and cost effectiveness in the distribution and transmission sectors is a statutory objective of the Board, but it is not the primary purpose or objective of the Electricity ARC. Nor, as noted above, are those the only energy activities in relation to which economic efficiency and cost effectiveness are relevant.

The Electricity ARC protects against harm by limiting or circumscribing how a utility may interact with its affiliates. It will, by its very nature, restrict utility behaviour rather than

facilitate it. While the Board does not expect to achieve economic efficiency or cost effectiveness (considered narrowly in the sense of utility efficiency and cost effectiveness more specifically) through the provisions of the Electricity ARC, the Board takes account of utility efficiency and cost effectiveness concerns when determining whether to make the provisions more or less restrictive. The Board is also guided by its economic efficiency and cost effectiveness objective, indeed by all of its objectives, in relation to the interpretation and application of the Electricity ARC and in determining applications for exemption from Electricity ARC provisions.

## **B. Section 1.2 - Definitions**

The Board is proposing to amend section 1.2 of the Electricity ARC to add new definitions of "Affiliate Contract", "direct costs", "fully-allocated costs", "indirect costs", "market price", "shared corporate services", "utility asset" and "utility revenue", and to remove the current definition of "fair market value". These proposed amendments support the proposed introduction of the new transfer pricing provisions described in section E below, and are to the same effect as the parallel definitions in the Gas ARC.

The Board is also proposing to amend section 1.2 of the Electricity ARC to add a new definition of "strategic business information", to support the proposed introduction of a new section that restricts a utility from providing that information to certain affiliates (this is described in section F below).

A number of housekeeping amendments to section 1.2 are also proposed (including the addition of new definitions of "distribute" and "transmit", the deletion of the definitions of "Director" and "licensee" and changes to the definitions of "distribution system" and "transmission system").

Certain stakeholders, most notably representatives of distributors, have commented that the definition of "energy service provider" should be narrowed such that it is limited to electricity retailing and natural gas marketing activities. Some have expressed the view that the definition and/or the manner in which that definition applies goes beyond the authority of the Board. Other stakeholders have indicated that the definition should remain as currently drafted or be expanded.

For the reasons expressed in section A above, the Board remains of the view that the current definition of "energy service provider" as well as the Electricity ARC provisions applicable in relation to energy service provider affiliates are within the Board's authority. Nonetheless, as indicated in sections C and D below, the Board is proposing to eliminate two of the four provisions that currently refer to energy service providers. If these amendments are adopted, the definition of "energy service provider" would be applicable only in relation to three sections. The first two are sections 2.5.1 and 2.5.2 of the Electricity ARC regarding equal access. Those sections go directly to the objective of preventing a utility from cross-subsidizing non-utility activities and preventing customer confusion as to the relationship between the regulated utility and the unregulated affiliate. The activities identified in the energy service provider definition are activities that either have been undertaken by the utilities in the past or are closely related to the regulated activity of utilities. Because these activities are closely connected to the regulated activities of the utility, additional protections to prevent

customer confusion are warranted.

The third is the new proposed section 2.6.4, which would prohibit a utility from providing “strategic business information” to an affiliate that is an energy service provider. That section is discussed in greater detail in section F below.

A number of stakeholders have also proposed that the definition of “confidential information” be amended. In some cases, the proposal was that the definition exclude information that is already in the public domain or available to the public. Other proposals included modifying the definition to capture information that is not specific to a customer and information regarding utility service provided in the past. The Board agrees with staff’s assessment, as set out in the Research Paper, that the current definition is simple to understand and apply. The Board further considers the current definition to provide the appropriate level of protection for utility customers. The Board does not believe that any change to the definition is warranted at this time.

The Board does not believe that information about customers gathered in the process of providing current or prospective utility service should be shared with affiliates. Apart from privacy-related concerns, which are arguably adequately protected by other legislation, the Board is concerned for two reasons: (1) this information, even if it is otherwise already public, has value in the form that it is held by the utility, and if it is provided to the affiliate, then it is an example of cross-subsidy; and (2) if this information is transmitted from the utility to the affiliate, the customer is likely to be confused as to the level of separation between the two entities and as to which activities are regulated and which are not. As indicated in section D, the Board is proposing to limit the restrictions on employee sharing such that only those employees with access to confidential information are affected. As this would be the only remaining express restriction on employee sharing, the Board believes it is particularly important that this restriction provide strong protection for customers. The current definition of confidential information does that. The Board notes that if the information is already public, then the affiliate is still able to access it in its publicly available form from sources other than the utility.

### **C. Section 2.1 - Degree of Separation**

The Board is proposing to amend section 2.1 by eliminating the requirement in section 2.1.2 that a utility be physically separated from any affiliate that is an energy service provider. The Board is satisfied that the elimination of this requirement, which will provide utilities with additional flexibility in terms of their arrangements, will not create the potential for material incremental harm in light of the other provisions, existing and proposed, of the Electricity ARC.

The Board is also proposing to eliminate section 2.1.4, which now is of historical interest only.

The Board is not proposing to amend section 2.1.3 regarding the independence of members of a utility’s Board of Directors. There was no consensus amongst stakeholders in relation to this issue. Some stakeholders proposed that the requirement be relaxed, others proposed that it be strengthened and yet others proposed that the

section remain as currently drafted. The Board is not convinced that there is a compelling need to change the requirement at this time, and notes that the proposal described in section E below to strengthen the transfer pricing provisions of the Electricity ARC addresses some of the concerns that might also be addressed by increasing the required minimum percentage of independent utility directors. The Board reminds utilities that the section speaks of independence from an affiliate, and not necessarily only independence from the board of directors of an affiliate. Compliance Bulletin 200601, issued on February 24, 2006, contains useful guidance on the concept of independence as used in this context.

#### **D. Section 2.2 – Sharing of Services and Resources**

The Board is proposing to amend section 2.2 to eliminate the prohibition, currently set out in section 2.2.4, against a utility sharing operating employees with an energy service provider affiliate. The general prohibition on sharing employees with access to confidential information contained in section 2.2.3 of the Electricity ARC, and the proposed new prohibition on the provision of “strategic business information” discussed in section F below, are considered sufficient to provide the necessary safeguards.

The Board is not proposing to eliminate section 2.2.3 of the Electricity ARC, which prohibits the sharing of employees who are directly involved in collecting, or have access to, confidential information. This provision remains important to the objectives of preventing cross-subsidization and customer confusion. However, the Board is proposing to amend the section by limiting its application to affiliates that are energy service providers. This reflects the Board’s view that the risk of harm is greatest in relation to energy service provider affiliates.

The Board notes that certain stakeholders put forward the view that concerns regarding the sharing of confidential information could be adequately addressed by means of confidentiality agreements. The Electricity ARC contains rules of general application, and the Board is not persuaded at this time that confidentiality agreements can be used in a manner that adequately addresses the potential harm that may arise in relation to the sharing or use of confidential information. For example, while a confidentiality agreement with a non-affiliated party has inherent compliance incentives and enforcement elements (the utility can take action against the party or, at a minimum, cease to do business with it, if it is in breach of the confidentiality agreement), the likelihood of these actions being taken cannot be relied upon to the same extent with confidentiality agreements between affiliates. However, if a utility can demonstrate that use of confidentiality agreements in particular circumstances will result in no harm to ratepayers, no customer confusion, and no cross-subsidization of the affiliate, then those specific circumstances could be assessed through an application for an exemption from section 2.2.3.

The Board is also proposing to add a new section to this part of the Electricity ARC that clarifies that the transfer pricing rules contained in section 2.3 do not apply to utilities and affiliates sharing services in emergency situations. In such cases, a reasonable cost-based price would be determined afterwards. This proposed amendment provides utilities with greater regulatory certainty and flexibility in responding to emergency situations.



## **E. Section 2.3 – Transfer Pricing**

Transfer pricing rules are critical to the achievement of the objectives of the Electricity ARC and, in particular, the objective of preventing cross-subsidy. The Board believes that greater rigour than is currently the case is required in relation to the pricing of affiliate transactions in the electricity sector in order to protect the interests of ratepayers.

A number of stakeholder comments pointed to the desirability of incorporating into the Electricity ARC the transfer pricing rules currently set out in the Gas ARC. These stakeholders noted that there appears to be little reason for not making the two ARCs more consistent in this regard, but cautioned that the Gas ARC thresholds may need to be modified. Other stakeholders, however, indicated that inclusion of the more onerous Gas ARC rules would result in increased costs with little demonstrable benefit to ratepayers.

While consistency between the two ARCs is not an objective in and of itself, the two codes serve the same underlying purpose and it is appropriate to consider the provisions of the Gas ARC when considering changes to the Electricity ARC. The Board has identified a need to strengthen the transfer pricing provisions of the Electricity ARC, and the Gas ARC provisions have been developed through extensive experience in dealing with these issues in the gas sector. There is no reason, in principle, why these provisions would be inappropriate for the electricity sector. As a result, the Board considers that it is appropriate to adopt the Gas ARC transfer pricing provisions in the Electricity ARC, with certain modifications.

A number of the proposed amendments contain thresholds below which the more rigorous requirements would not apply. The thresholds have been set at levels that, in the Board's view, represent an appropriate balance between the costs associated with the relevant transfer pricing requirements (competitive tendering and independent evaluation) and the benefits that are expected to flow from having the utility undertake those activities.

### *i. Section 2.3.1 - Term of Contracts with Affiliates*

Currently, there is no limit on the duration of contracts between a utility and an affiliate. It is proposed that section 2.3 be amended by adding a five-year limit on Affiliate Contracts, unless the Board approves otherwise. This amendment will help to ensure that a utility is paying an appropriate transfer price when considered against more current business conditions. The ability to seek Board approval of a longer term provides an avenue whereby exceptions can be made in appropriate cases, such as contracts pertaining to assets having a life of longer than five years.

The Board would consider the renewal of a contract, even if automatic, to be a new contract for the purpose of the application of this and other relevant provisions of the Electricity ARC.

*ii. Section 2.3.2 – Outsourcing to an Affiliate*

Currently, the Electricity ARC does not require a utility to perform any particular analysis prior to outsourcing services or products to an affiliate. It is proposed that section 2.3 be amended by adding a requirement that a utility complete a business case analysis before outsourcing to an affiliate a service, product, resource or use of asset that the utility currently provides internally. This amendment will help to better protect ratepayers by ensuring that proper consideration is given to outsourcing decisions. The Board believes, however, that some flexibility is desirable in relation to outsourcing transactions that have a modest value. The Board is therefore also proposing that the business case requirement not apply to an Affiliate Contract that has an annual value of less than \$100,000 or 0.1% of the utility's utility revenue (defined to exclude revenue from commodity sales), whichever is greater.

The Board does not believe it necessary to add a requirement that outsourcing be shown to be of benefit to ratepayers. This is consistent with the general "no harm" approach that underlies the Electricity ARC. The Board reminds utilities, however, that the issue of ratepayer benefit may be explored in the context of future rate cases.

The Board also does not believe that it is necessary to incorporate a provision, similar to the one found in the Gas ARC, that requires a business case to be repeated at least once every five years. The proposed five-year limit on the term of Affiliate Contracts referred to above will ensure that any transfer price is reflective of more current business conditions. In addition, the economic merit of a decision to outsource, and an analysis of the alternatives, can be considered in the context of the utility's rates case.

*iii. Section 2.3.3 - Transfer Pricing Where a Market Exists*

It is proposed that section 2.3 be amended to add more detailed market-based transfer pricing rules to be applied where a reasonably competitive market exists for a service, product, resource or use of asset that is provided by an affiliate to a utility or by a utility to an affiliate. As noted above, changes to section 1.2 are also proposed to provide the necessary new defined terms. The proposed amendments reflect the Board's view that tendering in a competitive marketplace is the most desirable and effective means by which to assess whether utilities are paying an appropriate transfer price.

Currently, the Electricity ARC accepts competitive tendering as evidence of the fair market value of a product or service, but does not require competitive tendering in any given case. The proposed amendments generally mandate the use of market tendering where a reasonably competitive market exists for a service, product, resource or use of asset. The proposed amendments also incorporate a requirement for an independent evaluation of competing bids for larger contracts (those having a value that exceeds \$500,000 or 0.5% of the utility's utility revenue (defined to exclude revenue from commodity sales), whichever is the greater). The Board believes, however, that some flexibility

should be provided where the value of the transaction is relatively modest. The Board is therefore also proposing that the market tendering requirement not apply to an Affiliate Contract that has an annual value of less than \$100,000 or 0.1% of the utility's utility revenue, whichever is the greater.

It should be noted that even when the threshold is not exceeded, there must nonetheless be satisfactory benchmarking or other evidence of market price available. In addition, the proposed amendments make it clear that cost-based pricing cannot be used where a reasonably competitive market exists for a service, product, resource or use of asset. As such, a utility must of necessity conduct a market review to determine whether a reasonably competitive market exists, as described in Compliance Bulletin 200604, and must be able to demonstrate the extent and results of such review if requested to do so.

The Board also considers it desirable to propose an anti-avoidance rule to ensure that utilities cannot avoid the need for market tendering or an independent evaluation by entering into a series of smaller contracts that fall below the applicable threshold. There is currently a parallel provision in the Gas ARC.

*iv. Section 2.3.4 - Transfer Pricing Where No Market Exists*

Currently, the Electricity ARC states that cost-based pricing may be used for affiliate transactions where there is no fair market value for a product or service. It is proposed that section 2.3 be amended to clarify that cost-based pricing is to be determined on the basis of fully-allocated costs, including a return on invested capital that is no higher (where the utility is acquiring the service, product, resource or use of asset) or no lower (where the utility is providing the service, product, resource or use of asset) than the utility's approved weighted average cost of capital. These proposed amendments provide greater clarity and certainty in relation to the manner in which cost-based pricing is to be determined.

The Board is also proposing to add a new section, similar in intent to a provision of the Gas ARC, that would require a utility to obtain details of the affiliate's cost determination whenever cost-based transfer pricing is used. This will ensure that such information can be made available to the Board when requested.

*v. Section 2.3.5 - Transfer Pricing for Shared Corporate Services*

Unlike the Gas ARC, the Electricity ARC does not currently contain provisions relating specifically to the pricing of shared corporate services. It is proposed that section 2.3 be amended to expressly allow the use of cost-based pricing for shared corporate services. An accompanying definition of "shared corporate services", which is the same as the definition of "shared core corporate services" in the Gas ARC, is also proposed to be added to section 1.2 of the Electricity ARC. These proposed amendments accept that cost-based pricing will always be appropriate in relation to shared corporate services.

vi. *Section 2.3.6 - Transfer Pricing for Transfer of Assets*

Currently, assets sold by a utility to an affiliate are to be priced at no less than the net book value of the asset. It is proposed that section 2.3 be amended to require that utility assets sold or transferred to an affiliate be priced at the higher of the market price or net book value, and that an independent assessment of the market price be obtained where the net book value of the asset exceeds \$100,000 or 0.1% of the utility's utility revenue, whichever is the greater.

The Gas ARC contains a provision that allows a utility to sell an asset to an affiliate at net book value if the net book value is less than \$10,000. The Board believes, however, that the higher of the market price or net book value is always the appropriate transfer price for assets, and that market price may significantly exceed the net book value in the case of long-lived, depreciated assets. The Board is therefore not proposing to include a similar provision in the Electricity ARC.

An anti-avoidance rule is also proposed to be included to ensure that utilities cannot avoid the application of these rules by entering into a series of smaller sale transactions that fall below the applicable threshold. While there is currently no comparable express provision in the Gas ARC, the Board believes that codification of such an anti-avoidance rule is desirable.

The proposed amendments also require that assets that a utility purchases or obtains from an affiliate be priced no higher than the market price.

**F. Restriction on Provision of Strategic Business Information**

The Electricity ARC currently contains provisions that restrict a utility from sharing with an affiliate any employees that collect or have access to confidential information. As noted in section D above, the Board is proposing to retain that restriction but to limit its application to energy service provider affiliates. As also noted in that section, the Board is proposing to eliminate the prohibition on the sharing of operating employees.

Confidential information is, broadly speaking, defined as customer information. It does not, however, include certain other types of information that a utility may have acquired or developed in conducting monopoly activities. Examples of such information include distribution system development or reinforcement plans, equipment acquisitions and work management plans (the timing of connection work). This type of information can have significant commercial value to anyone to whom it is provided and could reasonably be expected to provide an advantage to an affiliate if it were the only entity to receive it.

The fact that the utility has this information flows exclusively from its privileged position as a monopoly service provider. Unlike the situation in a competitive marketplace, the utility does not have this information as a result of its commercial or competitive efforts in the marketplace. The Board does not believe that it is appropriate for a utility to provide such information to an affiliate where the information can provide the affiliate with a business opportunity or other business advantage relative to third parties that

provide services in competition with the affiliate.

The Board is therefore proposing to amend section 2.6 of the Electricity ARC by adding a new section 2.6.4 that prohibits a utility from providing such strategic business information to an affiliate that is an energy service provider. A definition of “strategic business information” is also proposed to be added to section 1.2 of the Electricity ARC.

As noted above, the Board remains of the view that its mandate includes regulating utility conduct that can provide an unfair business advantage to an affiliate, and that this mandate extends to affiliates above and beyond those involved in electricity retailing or gas marketing. In addition, the new proposed restriction on the provision of strategic business information contributes to the achievement of the objectives of preventing customer confusion and cross-subsidization.

## **G. Other**

The text below describes certain additional amendments that are being proposed, as well as discussing three additional issues relating to the Electricity ARC.

### *i. Section 2.8 – Record Keeping and Reporting Requirements*

The Board is proposing to delete section 2.8 of the Electricity ARC, as the record-keeping and reporting requirements set out in that section are now also set out in the Board’s “Electricity Reporting and Record Keeping Requirements”. Minor changes to this latter document will be required to eliminate existing cross-references to section 2.8 of the Electricity ARC, and will be made in advance of the end of the next annual reporting cycle.

### *ii. Miscellaneous*

As noted above, the Board is using this opportunity to propose a number of amendments of a “housekeeping” nature. These include: the elimination or streamlining of certain definitions; the correction of typographical errors; the inclusion of a new provision (section 1.6.4) regarding determinations by the Board which mirrors the equivalent statutory provision; the updating of references to the CICA handbook in section 2.2.2; the elimination of section 2.5.7 which is now addressed in the Retail Settlement Code; and the inclusion of clarifying language in a variety of sections.

### *iii. Other Issues*

In their comments regarding the staff Research Paper, certain distributors referred to the impact of the application of the Electricity ARC on the provision of streetlighting or sentinel lighting services by distributors to their municipal affiliates. As noted in Compliance Bulletin 200605 issued on July 10, 2006, the provision of these services is not a permissible business activity under section 71(1) of the Act.

Another distributor raised a concern regarding the contracting out of utility

employees, and more specifically whether that is a permissible activity under section 71(1) of the Act. Compliance Bulletin 200605, issued on July 10, 2006, expresses the view that the “contracting out of distributor employees to a third party, including an affiliate” is not a permissible activity under section 71(1) of the Act. The Electricity ARC limits the sharing of employees in certain cases, but does not prohibit it in others. The concept of sharing in the Electricity ARC inherently requires that the employee be involved to some degree in the activities of both the utility and the affiliate, even if not necessarily at the same time. Where, however, a utility retains an employee for the sole purpose of providing that employee to an affiliate, the utility would be considered to be in the business of contracting out that employee. It will be a question of fact in each case whether a utility is contracting out an employee as a business activity in a manner contrary to section 71(1) of the Act.

The staff Research Paper contained a discussion of the relative merits of creating different rules for smaller utilities. Most stakeholders did not favour this approach. While the Board recognizes that compliance with the Electricity ARC may present special or different issues for smaller distributors, the Board is of the view that the ratepayers of those distributors are entitled to the same protection as are ratepayers of larger distributors vis-à-vis affiliate transactions. Accordingly, the Board is not proposing to make smaller distributors subject to different affiliate transaction rules.

### **III. Anticipated Costs and Benefits**

A number of the proposed amendments are designed to provide greater clarity as to the purpose or objectives of the Electricity ARC and as to the application or scope of various provisions. Greater clarity will provide greater regulatory certainty to utilities and other stakeholders in relation to the rules governing affiliate relations, and may over time decrease compliance costs.

The proposal to eliminate the current requirement for physical separation from an affiliate that is an energy service provider (currently section 2.1.2) and the current prohibition on the sharing of operational employees with energy service provider affiliates (currently section 2.2.4) will benefit utilities by providing increased flexibility and may lower operating costs. The Board is satisfied that the remaining provisions of the Electricity ARC, as it is proposed to be amended, are sufficient to provide the necessary safeguards such that no material incremental harm is expected to result from the elimination of these requirements.

The proposed introduction of more rigorous transfer pricing rules will better protect the interests of ratepayers.

The requirement for a business case analysis will ensure that outsourcing decisions are made after proper consideration of relevant factors. The requirement to conduct a business case analysis may impose additional costs on utilities, although the Board anticipates that most if not all utilities already conduct a form of business case analysis as a matter of good business practice and in anticipation that they may be called upon to justify the prudence of outsourcing decisions in a rate case.

The mandating of competitive tendering will better ensure that utilities are pricing affiliates transactions appropriately. The fact that this requirement does not apply to shared corporate services will provide utilities with greater flexibility in relation to the acquisition of those services and with greater certainty in relation to the pricing of those services. The inclusion of a definition of “shared corporate services” also provides greater certainty, and the definition is sufficiently broad to allow considerable operational flexibility. The requirement for an independent evaluation in relation to large contracts may impose some additional costs, but will promote transparency and more rigorous bidding. These proposed amendments will benefit ratepayers, and may ultimately lower prices over time where competition exists for products or services.

Ratepayers will also benefit from the requirement that the sale of utility assets to an affiliate be at the higher of market price or net book value and from the requirement that the market price of larger utility assets be the subject of an independent assessment.

Clarification of the rules regarding cost-based pricing will provide greater certainty to utilities. The introduction of a reference to fully-allocated costing codifies existing practice and is not expected to result in incremental costs to utilities.

The imposition of a maximum term for Affiliate Contracts will ensure that affiliate transactions are priced in a manner that reflects more current business conditions. This may increase transaction costs for some utilities depending on their current frequency of contract renewal, but the Board does not expect that these extra costs would be inhibitive or unwarranted. The requirement that a utility obtain details of the affiliate’s fully-allocated costs in situations where cost-based pricing is used is not expected to have ongoing cost implications for utilities once initial suitable arrangements have been made. Availability of this information will benefit all stakeholders in relation to the review of the pricing of affiliate transactions in rate cases and in relation to enforcement of the Electricity ARC.

Utilities will incur some costs in terms of compliance with a number of the new transfer pricing requirements (for example, the requirement to tender or to obtain an independent evaluation). To ensure that the incremental costs identified above are proportional to the benefits, many of the new transfer pricing requirements only apply to contracts having a more significant value. The thresholds take the form of the greater of a fixed dollar amount or a percentage of the utility’s utility revenue. The Board anticipates that the thresholds will operate such that the percentage test will be applicable for larger utilities, and the absolute dollar amounts will be applicable for smaller utilities.

The proposal to allow utilities and their affiliates to share services in emergency situations and to determine a reasonable cost-based price afterwards will benefit ratepayers by reducing any regulatory barriers to the provision of emergency services and will benefit utilities by providing greater regulatory certainty and operating flexibility.

The proposed restriction on the provision of “strategic business information” to energy service provider affiliates will contribute to the achievement of a number of the objectives of the Electricity ARC, and will benefit ratepayers and consumers without

imposing additional costs on utilities.

#### **IV. Coming Into Force**

The Board is proposing that most of the proposed amendments come into force on the date on which they are published on the Board's website after having been made by the Board. This is reflected in the proposed addition of a new section 1.6.1 to the Electricity ARC.

The Board anticipates that utilities may require some time in order to accommodate the new transfer pricing requirements. The Board is therefore proposing to defer the coming into force of most of the amendments to section 2.3 of the Electricity ARC for a period of three months. This is reflected in the proposed addition of a new section 1.6.2 to the Electricity ARC.

As set out in the proposed new section 1.6.3 of the Electricity ARC, the Board is proposing that the new requirements of the Electricity ARC not apply to existing Affiliate Contracts that were in place on June 15, 2007.

#### **V. Cost Awards**

Cost awards will be available under section 30 of the Act to eligible persons in relation to the provision of comments on the proposed amendments to the Electricity ARC set out in Attachment A, **to a maximum of 30 hours**. Costs awarded will be recovered from all licensed electricity distributors and all licensed electricity transmitters, based on their respective distribution or transmission revenues.

Attachment D contains important information regarding cost awards for this notice and comment process, including in relation to eligibility requests and objections. In order to facilitate a timely decision on cost eligibility, the deadlines for filing cost eligibility requests and objections will be strictly enforced.

In its July 10, 2007 Decision on Cost Eligibility, the Board determined that a number of interested parties were eligible for costs in relation to the consultation on the staff Research Paper. **Those same interested parties will be considered eligible for costs in relation to this notice and comment process, and need not submit a further request for cost eligibility.**

#### **VI. Invitation to Comment**

All interested parties are invited to make written submissions on the Board's proposed amendments to the Electricity ARC set out in Attachment A by **October 26, 2007**.

Three (3) paper copies of each filing must be provided, and should be sent to:

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319



2300 Yonge Street  
Suite 2700  
Toronto, Ontario  
M4P 1E4

The Board requests that interested parties make every effort to provide electronic copies of their filings in searchable/unrestricted Adobe Acrobat (PDF) format, and to submit their filings through the Board's web portal at [www.err.oeb.gov.on.ca](http://www.err.oeb.gov.on.ca). A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca), and fill out a user ID password request. Additionally, interested parties are requested to follow the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of filings may be filed by e-mail at [boardsec@oeb.gov.on.ca](mailto:boardsec@oeb.gov.on.ca).

Those that do not have internet access should provide a CD or diskette containing their filing in PDF format.

Filings to the Board must be received by the Board Secretary by **4:45 p.m.** on the required date. They must quote file number **EB-2007-0662** and include your name, address, telephone number and, where available, your e-mail address and fax number.

This Notice, including the attached proposed amendments to the Electricity ARC, and all written submissions received by the Board in response to this Notice, will be available for public viewing on the Board's web site at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) and at the office of the Board during normal business hours.

If you have any questions regarding the proposed amendments described in this Notice, please contact John Vrantidis at 416-440-8122. The Board's toll free number is 1-888-632-6273.

**DATED** at Toronto, September 19, 2007.

ONTARIO ENERGY BOARD

*Original Signed By*

Peter O'Dell  
Assistant Board Secretary

Attachments:      Attachment A: Proposed Amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters  
                         Attachment B: Affiliate Relationships Code for Electricity Distributors and Transmitters Containing Proposed Amendments (comparison version) for information purposes only  
                         Attachment C: Affiliate Relationships Code for Electricity

Distributors and Transmitters Containing Proposed Amendments  
(clean version) for information purposes only  
Attachment D: Cost Awards

## Attachment A

### Proposed Amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters

**Note:** The text of the proposed amendments is set out in italics below, for ease of identification only.

1. Section 1.1 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted and replaced with the following:

*This Code sets out rules that govern the conduct of utilities as that conduct relates to their respective affiliates, with the objective of:*

- a) *protecting ratepayers from harm that may arise as a result of dealings between a utility and its affiliate;*
- b) *preventing a utility from cross-subsidizing competitive or non-monopoly activities;*
- c) *protecting the confidentiality of information collected by a utility in the course of provision of utility services;*
- d) *ensuring there is no preferential access to utility services;*
- e) *preventing a utility from acting in a manner that provides an unfair business advantage to an affiliate that is an energy service provider; and*
- f) *preventing customer confusion that may arise from the relationship between a utility and its affiliate.*

2. Section 1.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended as follows:

- i. by deleting the word “code” in the first line immediately following the heading “Definitions” and replacing it with the word “Code”;
- ii. by deleting the definitions of the following terms: “Director”, “fair market value”, “licensee”, “marketing” and “Municipal utility”;
- iii. by deleting the definition of “affiliate” and replacing it with the following:  
  
*“affiliate”, with respect to a corporation, has the same meaning as in the Business Corporations Act (Ontario);*
- iv. by adding the following immediately after the definition of “affiliate”:

*“Affiliate Contract” means any contract between a utility and an affiliate, and includes a Services Agreement;*

- v. by adding the following immediately after the definition of “confidential information”:

*“direct costs” means costs that can reasonably be identified with a specific unit of product or service or with a specific operation or cost centre;*

*“distribute” means to convey electricity at voltages of 50 kilovolts or less;*

- vi. by deleting the definition of “distribution system” and replacing it with the following:

*“distribution system” means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose;*

- vii. by adding the following immediately after the definition of “energy service provider”:

*“fully-allocated cost” means the sum of direct costs plus a proportional share of indirect costs;*

*“indirect costs” means costs that cannot be identified with a specific unit of product or service or with a specific operation or cost centre, and include but are not limited to overhead costs, administrative and general expenses, and taxes;*

- viii. by adding the following immediately after the definition of “licence”:

*“market price” means the price reached in an open and unrestricted market between informed and prudent parties, acting at arm’s length and under no compulsion to act;*

- ix. by amending the definition of “Rate Order” by deleting the word “licensee” and replacing it with the word “utility”;

- x. by amending the definition of “Services Agreement” by deleting the word “affiliate(s)” and replacing it with the word “affiliate”;

- xi. by adding the following immediately after the definition of “Services Agreement”:

*“shared corporate services” are business functions that provide shared strategic management and policy support to the corporate group of which the utility is a member, relating to legal, finance, tax, treasury, pensions,*

*risk management, audit services, corporate planning, human resources, health and safety, communications, investor relations, trustee, or public affairs;*

*“strategic business information” means information, including confidential information, that a utility has obtained or developed in the course of providing, or otherwise has in its possession as a result or for the purpose of providing, current or prospective utility service and that (a) identifies or can reasonably be expected to identify or (b) provides or can reasonably be expected to provide a business opportunity or other business advantage to the person to whom the information is provided;*

- xii. by amending the definition of “transmission system” by deleting the phrase “at voltages of 50 kilovolts or greater”;
- xiii. by adding the following immediately after the definition of “transmission system”:

*“transmit” means to convey electricity at voltages of more than 50 kilovolts;*

- xiv. by amending the definition of “utility” by deleting the phrase “, for the purpose of this Code,” and by adding the word “electricity” immediately before the word “distributor”;
- xv. by adding the following immediately after the definition of “utility”:

*“utility asset” means tangible or intangible property included in the utility’s rate base;*

*“utility revenue” means, in relation to a distributor, its distribution revenue and, in relation to a transmitter, its transmission revenue; and*

- xvi. by deleting the definition of “utility services” and replacing it with the following:

*“utility services” means the services provided by a utility for which a rate or charge has been approved by the Board, and includes a distributor’s obligation to sell electricity pursuant to section 29 of the Electricity Act, 1998.*

- 3. The heading of section 1.3 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended by deleting the letter “s” at the end of the word “Interpretations”.

4. Section 1.4 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted and replaced with the following:

*This Code applies to utilities licensed under Part V of the Act.*

5. Section 1.5 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended as follows:
  - i. by deleting the phrase “The Affiliate Relationships” and replacing it with the word “This”; and
  - ii. by deleting the phrase “distributor’s or transmitter’s” and replacing it with the word “utility’s”;
6. The heading of section 1.6 of the Affiliate Relationships Code for Electricity Distributors and Transmitters and section 1.6 of the Affiliate Relationships Code for Electricity Distributors and Transmitters are deleted and replaced with the following:

**1.6 Amendments to this Code and Determinations by the Board**

*1.6.1 Subject to section 1.6.2, the amendments to this Code made by the Board on [insert date] come into force on the date on which the Board publishes the amendments by placing them on the Board’s web site after they have been made by the Board.*

*1.6.2 The following amendments to this Code made by the Board on [insert date] come into force on the date that is three months from the date on which the Board publishes the amendments by placing them on the Board’s web site after they have been made by the Board:*

*(a) the amendment to section 1.2 deleting the definition of “fair market value”; and*

*(b) the amendments to section 2.3, other than the amendments adding sections 2.3.4.1 and 2.3.4.2.*

*1.6.3 The amendments to this Code made by the Board on [insert date] do not apply to an Affiliate Contract that was in place on June 15, 2007 until such time as the initial term of such Affiliate Contract expires.*

*1.6.4 Any matter under this Code requiring a determination by the Board may be determined without a hearing or through an oral, written or electronic hearing, at the Board’s discretion.*

7. Section 2.1.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted.

8. Section 2.1.3 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is renumbered as section 2.1.2.
9. Section 2.1.4 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted.
10. Section 2.2.1 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended by deleting the first sentence and replacing it with the following:

*Where a utility provides services or resources to an affiliate or receives services or resources from an affiliate, it shall do so in accordance with a Services Agreement, the terms of which may be reviewed by the Board to ensure compliance with this Code.*
11. Section 2.2.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended by deleting “5900” wherever it appears in that section and replacing it with “5970”.
12. Section 2.2.3 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted and replaced with the following:

*2.2.3 A utility shall not share with an affiliate that is an energy service provider employees that are directly involved in collecting, or have access to, confidential information.*
13. Section 2.2.4 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted.
14. Section 2.2.5 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is renumbered as section 2.2.4.
15. Section 2.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended by adding the following new section 2.2.5:

*2.2.5 The transfer pricing rules set out in section 2.3 do not apply when a utility and an affiliate share services in an emergency situation; a reasonable fully-allocated cost-related price shall be determined afterwards by the parties.*
16. Section 2.3 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended by deleting sections 2.3.1, 2.3.2, 2.3.3 and 2.3.4 and replacing them with the following:

**2.3.1 Term of Contracts with Affiliates**

*2.3.1.1 The term of an Affiliate Contract between a utility and an affiliate shall not exceed five years, unless otherwise approved by the Board.*

## **2.3.2 Outsourcing to an Affiliate**

- 2.3.2.1 *If a utility intends to enter into an Affiliate Contract for the receipt of a service, product, resource, or use of asset that it currently provides to itself, the utility shall first undertake a business case analysis, unless the Affiliate Contract would have an annual value of less than \$100,000 or 0.1% of the utility's utility revenue, whichever is greater. Where an Affiliate Contract has a term of more than one year, the annual value of the Affiliate Contract shall be determined by dividing the total value of the Affiliate Contract by the number of years in the term.*
- 2.3.2.3 *For the purposes of section 2.3.2.1, the business case analysis shall contain (a) description of relevant utility needs on a per-service basis, (b) identification of the options available internally or externally from an affiliate or third party, (c) economic evaluation of all available options including the utility's current fully-allocated cost (which may include a return on the utility's invested capital equal to the approved weighted average cost of capital), (d) explanation of the selection criteria (including any non-price factors to be taken into account), (e) estimate of any benefits to the utility's Ontario ratepayers from outsourcing, and (f) justification of why any separate items were bundled together when considered for outsourcing.*

## **2.3.3 Where a Market Exists**

- 2.3.3.1 *Where a reasonably competitive market exists for a service, product, resource or use of asset, a utility shall pay no more than the market price when acquiring that service, product, resource or use of asset from an affiliate.*
- 2.3.3.2 *A fair and open competitive bidding process shall be used to establish the market price before a utility enters into or renews an Affiliate Contract.*
- 2.3.3.3 *Despite section 2.3.3.2, where satisfactory benchmarking or other evidence of market price is available, a competitive tendering or bidding process is not required to establish the market price for a contract with an annual value of less than \$100,000 or 0.1% of the utility's utility revenue, whichever is greater. Where an Affiliate Contract has a term of more than one year, the annual value of the Affiliate Contract shall be determined by dividing the total value of the Affiliate Contract by the number of years in the term.*
- 2.3.3.4 *Where the value of a proposed contract over its term exceeds \$500,000 or 0.5% of the utility's utility revenue, whichever is greater, a utility shall not award the contract to an affiliate before an independent evaluator retained by the utility has reported to the utility on how the*



*competing bids meet the criteria established by the utility for the competitive bidding process.*

2.3.3.5 *The Board may, for the purposes of sections 2.3.3.3 and 2.3.3.4, consider more than one Affiliate Contract to be a single Affiliate Contract where they have been entered into for the purpose of setting the contract values at levels below the threshold level set out in section 2.3.3.3 or 2.3.3.4.*

2.3.3.6 *Where a reasonably competitive market exists for a service, product, resource or use of asset, a utility shall charge no less than the market price of the service, product, resource or use of asset when selling that service, product, resource or use of asset to an affiliate.*

## **2.3.4 Where No Market Exists**

2.3.4.1 *Where it can be established that a reasonably competitive market does not exist for a service, product, resource or use of asset that a utility acquires from an affiliate, the utility shall pay no more than the affiliate's fully-allocated cost to provide that service, product, resource or use of asset. The fully-allocated cost may include a return on the affiliate's invested capital. The return on invested capital shall be no higher than the utility's approved weighted average cost of capital.*

2.3.4.2 *Where a reasonably competitive market does not exist for a service, product, resource or use of asset that a utility sells to an affiliate, the utility shall charge no less than its fully-allocated cost to provide that service, product, resource or use of asset. The fully-allocated cost shall include a return on the utility's invested capital. The return on invested capital shall be no less than the utility's approved weighted average cost of capital.*

2.3.4.3 *Where a utility pays a cost-based price for a service or resource that is obtained from an affiliate, the utility shall obtain from the affiliate, from time to time as required to keep the information current, a detailed breakdown of the affiliate's fully-allocated cost of providing the service or resource.*

## **2.3.5 Shared Corporate Services**

2.3.5.1 *Despite sections 2.3.3.1 and 2.3.3.6, for shared corporate services, fully-allocated cost-based pricing (as calculated in accordance with sections 2.3.4.1 and 2.3.4.2) may be applied between a utility and an affiliate provided that the utility complies with section 2.3.4.3.*

### **2.3.6      *Transfer of Assets***

- 2.3.6.1    If a utility sells or transfers to an affiliate a utility asset, the price shall be the greater of the market price or the net book value of the asset.*
- 2.3.6.2    Before selling or transferring to an affiliate a utility asset with a net book value that exceeds \$100,000 or 0.1% of the utility's utility revenue, whichever is greater, the utility shall obtain an independent assessment of its market price.*
- 2.3.6.3    If a utility purchases or obtains the transfer of an asset from an affiliate, the price shall be no more than the market price.*
- 2.3.6.4    Before a utility purchases or obtains the transfer of an asset from an affiliate with a net book value that exceeds \$100,000 or 0.1% of the utility's utility revenue, whichever is greater, the utility shall obtain an independent assessment of its market price.*
- 2.3.6.5    The Board may, for the purposes of sections 2.3.6.2 and 2.3.6.4, consider more than one asset transaction to be a single transaction where the transactions have been entered into for the purpose of setting the transfer prices at levels below the threshold level set out in section 2.3.6.2 or 2.3.6.4.*
17.    Section 2.5.4 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended as follows:
- i.      by adding the phrase “or utility services” to the end of the first sentence; and
  - ii.     by deleting the word “Director” in paragraph (c) and replacing it with the word “Board”.
18.    Section 2.5.6 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended as follows:
- i.      by deleting the phrase “transmission and distribution” and replacing it with the phrase “transmission or distribution”; and
  - ii.     by adding the phrase “by the utility” immediately after the phrase “processed and provided”.
19.    Section 2.5.7 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted.
20.    The heading of section 2.6 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted and replaced with the following:

**2.6 Confidentiality of Confidential Information and Restriction on Provision of Strategic Business Information**

21. Section 2.6 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended by adding the following new section 2.6.4:

*2.6.4 A utility shall not provide strategic business information to an affiliate that is an energy service provider.*

22. Section 2.8 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted.

**Attachment B**

**Affiliate Relationships Code for Electricity Distributors and Transmitters  
Containing Proposed Amendments**

**Comparison Version**

**For Information Purposes Only**

[See the attached document]

**Attachment C**

**Affiliate Relationships Code for Electricity Distributors and Transmitters  
Containing Proposed Amendments**

**Clean Version**

**For Information Purposes Only**

[See the attached document]

## Attachment D

### Cost Awards

#### Cost Award Eligibility

The Board will determine eligibility for costs in accordance with its *Practice Direction on Cost Awards*. Any person intending to request an award of costs must file with the Board a written submission to that effect by **September 26, 2007**, identifying the nature of the person's interest in this process and the grounds on which the person believes that it is eligible for an award of costs (addressing the Board's cost eligibility criteria as set out in section 3 of the Board's *Practice Direction on Cost Awards*). An explanation of any other funding to which the person has access must also be provided, as should the name and credentials of any lawyer, analyst or consultant that the person intends to retain, if known. All requests for cost eligibility will be posted on the Board's website.

Licensed electricity distributors and licensed electricity transmitters will be provided with an opportunity to object to any of the requests for cost award eligibility. If an electricity distributor has any objections to any of the requests for cost eligibility, such objections must be filed with the Board by **October 9, 2007**. Any objections will be posted on the Board's website. The Board will then make a final determination on the cost eligibility of the requesting parties.

#### Eligible Activities

Cost awards will be available in relation to the provision of comments on the proposed amendments to the Electricity ARC set out in Attachment A, to a maximum of 30 hours.

#### Cost Awards

When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of its *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

The Board will use the process set out in section 12 of its *Practice Direction on Cost Awards* to implement the payment of the cost awards. Therefore, the Board will act as a clearing house for all payments of cost awards in this process. For more information on this process, please see the Board's *Practice Direction on Cost Awards* and the October 27, 2005 letter regarding the rationale for the Board acting as a clearing house for the cost award payments. These documents can be found on the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) on the "Rules, Guidelines and Forms" webpage.

The Board expects that groups representing the same interests or class of persons will make every effort to communicate and co-ordinate their participation in this process.