Aiken & Associates
578 McNaughton Ave. West
Chatham, Ontario, N7L 4J6

Phone: (519) 351-8624
Fax: (519) 351-4331
E-mail: raiken@xcelco.on.ca

October 23, 2007

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

Re: EB-2007-0662 – LPMA Submissions on Proposed Amendments to Affiliate Relationships Code for Electricity Distributors and Transmitters

Please find attached three copies of the submissions of the London Property Management Association on the EB-2007-0662 Proposed Amendments to Affiliate Relationships Code for Electricity Distributors and Transmitters dated September 19, 2007.

Sincerely

Randy Aiken

Randy Aiken
Aiken & Associates

Attachment

EB-2007-0662

LONDON PROPERTY MANAGEMENT ASSOCIATION COMMENTS ON THE BOARD'S PROPOSED AMENDMENTS TO THE AFFILIATE RELATIONSHIPS CODE FOR ELECTRICITY DISTRIBUTORS AND TRANSMITTERS

These are the comments of the London Property Management Association ("LPMA") on the Proposed Amendments to Affiliate Relationships Code for Electricity Distributors and Transmitters dated September 19, 2007.

General Submissions

LPMA agrees with the Board that the Electricity ARC remains relevant to the Ontario electricity sector. LPMA also agrees with the Board's finding that, despite the changes that have occurred in the electricity sector since 1999, there is no need for a fundamental change in either the approach or the principles underlying the current ARC.

In the September 19, 2007 document titled "Proposed Amendments to Affiliate Relationships Code for Electricity Distributors and Transmitters", the Board has proposed a number of adjustments to the Electricity ARC. As the Board indicates, some of the adjustments are being proposed to provide greater clarity, some are to allow distributors additional flexibility and yet others are being made to ensure that ratepayers are more clearly protected from the activities of utilities relative to their affiliates. The Board also indicates that some of the proposed amendments are of a purely housekeeping nature. Overall LPMA believes that the package of proposed amendments is balanced and appropriate.

In particular, LPMA strongly supports the proposed amendments related to transfer pricing, as outlined in Section 2.3 of the report. Clearly defined and understood rules related to transfer pricing are the key protection to ratepayers when a utility has the opportunity to interact with an affiliate.

Submissions on Section 2.3

As previously submitted (LPMA Comments dated July 18, 2007 on Staff Research Paper) the LPMA believes that the Gas ARC provisions offer an excellent starting point and comparison when reviewing the appropriateness of the Electricity ARC. It is submitted that the Board's adoption of the Gas ARC transfer pricing provisions, with certain modifications, is appropriate.

The proposal to add a five year limit (Section 2.3.1) on Affiliate Contracts will ensure ratepayers that a utility is paying an appropriate transfer price when considered against current business conditions. With the potential for significant utility consolidation, there also exists significant potential for affiliate consolidation and/or affiliate elimination. This means that the current business conditions and participants may be significantly different tomorrow than they are today. One would expect that new participants may enter the market, some existing participants may exit the market and some existing participants may reduce or enhance the services they offer within the broader market. This market for utility related services is still a relatively new one. It should be expected that growing pains will continue for many years as the market evolves and gradually matures. The five year limit will provide stability for utilities, their affiliate and their ratepayers while at the same time ensuring that all parties are protected if business conditions change significantly.

The proposed amendments related to outsourcing to an affiliate (Section 2.3.2) are adequate, since the economic decision to outsource can always be considered in the context of a utility's rates case. However, LPMA believes more clarity in this section may be required. In particular, the first paragraph indicates that Section 2.3 should be amended by adding a requirement that a utility complete a business case analysis before outsourcing a service to an affiliate. In the third paragraph, the Board indicates that it does not believe that a business case needs to be repeated at least once every five years. The rationale for this is that the proposed five year limit on the term of an Affiliate Contract will ensure that any transfer price is reflective of more current business conditions. Further, the Board has indicated that the renewal of a contract, even if

automatic, would be a new contract for the purpose of the application of this and other relevant provisions of the Electricity ARC. In light of the preceding, it is unclear to the LPMA what circumstances would result in a utility not doing a business case at least once every five years. If a business case is required before outsourcing to an affiliate, and if a renewal of an existing contract is considered a new contract, and if the maximum term of an affiliate contract (excluding specific Board approval for longer terms), then it would appear that a business cases could have to be done at least once every five years.

LPMA supports the amendments as proposed in Section 2.3.3 – Transfer Pricing Where a Market Exists and as proposed in Section 2.3.4 – Transfer Pricing Where No Market Exists. However, LPMA notes that a materiality threshold in these sections, and in Section 2.3.2 – Outsourcing to an Affiliate, and in Section 2.3.6 – Transfer Pricing for Transfer of Assets refer to the "utility's utility revenue". LPMA provides some further submissions on the clarity on the definition of this revenue below in the section related to Specific Submissions.

LPMA strongly supports the adoption of the Gas ARC and definition of "shared corporate services". It is hoped that the clarity that Section 2.3.5 provides will provide guidance to parties on how costs are to be calculated.

With regard to Section 2.3.6 – Transfer Pricing for Transfer of Assets, it is unclear to the LPMA why the threshold for an independent assessment of the market price for an asset should be related to a percentage of the utility's utility revenue. It may be more appropriate to have the threshold as the greater of a fixed dollar amount and a percentage of utility rate base.

Submissions on Anticipated Costs and Benefits

The report indicates, at page 15 that "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."

It is not clear to the LPMA that ratepayers would necessarily benefit if the market price of an asset sold to an affiliate is in excess of the net book value. At a high level, the benefit should be as the result of a lower rate base. However, LPMA believes that it would be useful if the Board would illustrate the benefits that it says would accrue to ratepayers with a number of examples. In particular, the impact of the sale of a depreciable asset versus a non-depreciable asset and the sale of an asset that is part of a larger asset class versus the sale of an asset that is the sole asset in an asset category, as well as the only asset in a Capital Cost Allowance ("CCA") rate class. The examples would clearly illustrate the intent of the Board.

Specific Submissions

This section provides submissions on specific parts of the Proposed ARC.

a) Definition of "shared corporate services".

The definition provided refers to a "corporate group". However, it does not appear that "corporate group" has been defined. Does a corporate group, for example, include all affiliates or does it include related parties or does it have some wider definition?

b) Definitions of distribution and transmission systems.

"Distribute" is defined to mean to convey electricity at voltages of 50 kilovolts or less. This does not appear to alter the definition of a distribution system as the definition of a distribution system had included the reference to the 50 kilovolts or less. However the definition of a transmission system does appear to be altered. Previously, a transmission system was defined as a system for transmitting electricity at voltages of 50 kilovolts or higher. The definition of transmit has now been limited to more than 50 kilovolts. Does this mean that all 50 kV lines are now considered to be part of a distribution system? If so, is this definition consistent with definitions used by the OEB for other purposes such as rate applications and the Uniform System of Accounts? If not, should those definitions be adjusted for consistency?

Does the subtle change in the definition of a transmission system have any impact on the companies that operate both a distribution and transmission system, such as Hydro One and Great Lakes Power? Is any transfer of assets from the transmission system to the distribution system needed for rate making purposes, since transmission costs are pooled and recovered from all provincial ratepayers whereas distribution costs are not pooled and are recovered only from the ratepayers of the distribution utility?

c) Definition of "utility revenue".

As noted above, LPMA believes that further clarity is required in the definition of "utility revenue". The proposed definition indicates that it means, in relation to a distributor, its distribution revenue, and in relation to a transmitter, its transmission revenue. However, neither distribution revenue nor transmission revenue is explicitly defined. The text of the report indicates that a utility's utility revenue is defined to exclude revenue from commodity sales. However this has not been explicitly stated in the definition provided.

Further, even allowing for the exclusion of revenue from commodity sales, it is not clear what distribution revenue, for example, would include or not include. For example, does distribution revenue include any of the following: revenue collected through rate riders (for example, regulatory assets); the pass through of transmission related costs by distributors (network service rate, line & transformation connection); the wholesale market service rate; the rural rate protection charge; or the regulated price plan administration charge. LPMA believes that the definition of distribution revenue and transmission revenue should be explicitly defined with reference to what is (or what is not) to be included. This would provide much needed clarity to all parties and avoid confusion and different interpretations going forward.

d) Section 2.2.3.

The proposed wording indicates that "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".

LPMA suggest that two additions to this wording may be appropriate. First, employees that are directly, or indirectly, involved in collecting confidential information should not be shared. Second, employees involved in collecting, or analyzing, or have access to, confidential information should not be shared.

Employees that are indirectly involved with the collecting (and/or analyzing) confidential information should not be shared with an affiliate as they may well have as much knowledge of the confidential information as would an employee that directly collects the information. Similarly, an employee involved in the analysis of the confidential information is likely to have more knowledge of the confidential information than does an employee who simply collects the information. Both employees should not be shared with an affiliate.

e) Section 2.2.4.

This section deals with the event of an emergency situation and allows a utility to share services and resources, without a Service Agreement, with an affiliate which is also a utility. However, an "emergency situation" has not been defined. For clarity, a definition of an "emergency situation" should be included in the definition section.

f) Section 2.3.3.5

This section deals with the possibility of more than one Affiliate Contract being entered into for the purpose of setting the contract values at levels below the threshold level set out in Sections 2.3.3.3 or 2.3.3.4. In such circumstances the Board may consider these contracts to be a single Affiliate Contract.

The LPMA submits that it is not clear how this section would or could be interpreted when the multiple Affiliate Contracts are entered into for the purpose of setting the contract values at levels below the threshold at different times during the same fiscal year or spread across two different fiscal years. LPMA submits that the phrase "regardless of when the Affiliate Contract has been entered into" should be added onto the end of the

section. This would remove any doubt that the timing of entering into the individual contracts would be a way to circumvent this section.

g) Section 2.3.6.5

The same submissions as found above for Section 2.3.3.5 apply to this section as well. LPMA again submits that the phrase "regardless of when the Affiliate Contract has been entered into" should be added onto the end of the section. This would again remove any doubt that the timing of entering into the individual contracts would be a way to circumvent this section. This may be even more relevant for asset transfers than it is for the provision of services.