Ontario Energy Savings L.P.

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Wednesday, October 24, 2007

Kirsten Walli
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto ON
M4P 1E4

Via OEB Electronic Portal & Courier

Dear Ms. Walli:

Re: EB-2007-0662 Proposed Amendments to the Affiliate Relationship Code for Electricity Distributors and Transmitters

Please find attached three copies of the submission from Ontario Energy Savings L.P. regarding the above matter. Please note this document is also being filed through the OEB electronic portal, the verification of such is enclosed.

Please contact me, should you have any questions or concerns.

Yours truly,

Nola L. Ruzycki
Director, Regulatory Affairs
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Encl.

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October 24, 2007

Attention: Kirsten Walli
Ontario Energy Board
PO Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Via OEB Electronic Portal & Courier

Dear Ms. Walli,

Re: EB-2007-0662 Proposed Amendments to the Affiliate Relationship Code for Electricity Distributors and Transmitters

Ontario Energy Savings L.P. ("OESLP") is writing in response to the Ontario Energy Board ("the Board") invitation to comment on the proposed amendment to the Affiliate Relationship Code for Electricity Distributors and Transmitters ("electricity ARC").

OESLP wishes to comment on the existing codes and proposed amendments thereto, specifically concerning competitive electricity retail services offered through an affiliate. OESLP strongly submits that it is the role of the Board to ensure, through appropriate codes, that a utility cannot and does not use it dominant position where it may impede the development of competition and threaten the viability of the market and consumer choice.

OESLP contends that the current and proposed amendments to the electricity ARC do not provide protection against market abuse by the utility or its affiliate.

OESLP respectfully submits that a number of further amendments need to be addressed in the electricity ARC in order to ensure that an affiliate of a utility is not given an unfair advantage.

OESLP agrees with the addition of Section 1.1 (a) - 1.1(f), and is especially supportive of any wording in the electricity ARC that prevents a utility from:

(i) cross-subsidizing competitive or non-monopoly activities;
(ii) acting in a manner that provides its affiliate with an unfair business advantage; or
(iii) creating customer confusion as to the relationship between the utility and its affiliate.

OESLP is supportive of adding the definition of "strategic business information."

OESLP does not support the Board's proposed removal of the following wording in, Section 2.1.2,

> *"A utility shall be physically separated from any affiliate who is an energy service provider."*

The company contends that allowing a utility and its affiliate to occupy the same location unlevels the playing field by potentially offering affiliates preferential treatment on property costs and location advantage as compared to non-affiliated market players. Conveniently, shared accommodation of businesses also proliferates confusion for the consumer about the relationship between the affiliate and the utility.

As outlined in Section 2.2.1 the utility and the affiliate may share services and resources if done so via a Board-reviewed Services Agreement. Section 2.2.1 specifically outlines what shall be included in the Services Agreement. OESLP contends that the electricity ARC should specifically prohibit the sharing of websites, computer and telephone systems, call centers, and personnel in an additional sub-section under 2.2 Sharing of Services and Resources.

OESLP agrees with the wording change in Section 2.2.3.

Section 2.5.1 must be broadened to include a statement which ensures that a utility cannot offer affiliate products via its website. The following wording is suggested:

> *"A utility shall not endorse or support marketing activities of an affiliate which is an energy service provider. A utility may include an affiliate as part of a listing of alternate service providers, but the affiliate's name shall not in any way be highlighted. The utility website or utility call-center must not, in any way, allow for customer sign-up or purchase of any product offered by any of the alternative energy service providers included on the website listing. Further, the website listing must be open to accommodate requests for inclusion by any alternative energy service provider who so wishes to be listed."*

OESLP continues to maintain that the wording in Section 2.5.3 must be enhanced to ensure that utility affiliates cannot share any type of branding and/or logos with the distribution company nor have any similarities in its name. Utility affiliates wishing to use the same brand, logo or name similarity would, in fact, enjoy a significant advantage over retailers as they would enjoy major brand recognition and the benefit of the distribution relationship with the existing customer base. Additionally, using any of these identifiers would lead to an unfair advantage, an unlevel playing field, and customer confusion, as to the relationship between the utility and its affiliate. OESLP proposes the following wording for this section:

> *"A utility affiliate shall not use the utility's name, logo or other distinguishing characteristics nor shall it use name similarities when conducting business as a competitive retail energy provider."*

The company supports the addition of Section 2.6.4 “A utility shall not provide strategic business information to an affiliate that is an electricity service provider.”

OESLP strongly urges the Board to recognize and codify all areas where an affiliate of a utility can gain an advantage over other competitive retail electricity providers. An unfair advantage can be achieved by a utility affiliate in numerous ways; the following list is not meant to be exhaustive:

- i) by using the same or similar name, branding and or/logos (Section 2.5.3, suggested changes provided above);
- ii) by sharing space or infrastructure (the Board has proposed deleting the requirement for physical separation. OESLP strongly disagrees with this proposed change and has provided comments above);
- iii) through sharing of customer lists, billing, and credit information (Section 2.6.4);
- iv) by sharing websites, computer and/or telephone systems, call centers, personnel etc. (Not referenced, however, Section 2.2.1 refers to arrangements to share resources via a Services Agreement, please see comments related to this section above)
- v) by making the affiliates product available through the Utility website or call-center (Section 2.5.1, suggested changes are provided above);
- vi) by sharing staff resources with the utility (Section 2.2.3, OESLP supports the proposed amendment but, still believes that resources should not be shared in any case with an affiliate);
- vii) through shared cost-centers with the utility and by using something other than fully-allocated costing practices (not referenced in the electricity ARC).

Electricity retailers want to ensure that all parties competing in the competitive market are doing so on a level-playing field.

If you have any questions, please feel free to contact me at 905-795-4204.

Yours truly,

Nola L. Ruzycki
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