ERIE THAMES POWERLINES
CORPORATION

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October 26, 2007

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

Dear Ms. Walli:

Re: Proposed Amendments to Affiliate Relationship Code for Electricity Distributors and Transmitters

Board File No.: EB-2007-0662

Thank you for the opportunity to comment on the Board's proposed amendments to the Affiliate Relationship Code ("ARC"). Enclosed are the comments of Erie Thames Powerlines Corporation relating to the following topics:

- Section 1.1 – Purpose of the Code
- Section 1.2 – Definitions
- Section 2.3 – Transfer Pricing

In addition to submitting an Adobe Acrobat (PDF) version via the Board's web portal, we have delivered three (3) paper copies by courier to the above-noted address.

Please direct any questions or comments to the undersigned at tmoore@eriethamespower.com.

Yours truly,

[original signed]

Tyler Moore, LL.B.
General Counsel

Submissions of Erie Thames Powerlines Corporation in Response to the Board's Notice of Proposal to Amend the Affiliate Relationships Code for Electricity Distributors and Transmitters, dated September 19, 2007

1. Section 1.1 – Purpose of the Code

"preventing customer confusion that may arise from the relationship between a utility and its affiliate"

Erie Thames Powerlines Corporation ("**Erie Thames**") agrees with the addition of the above as a principal objective of the Affiliate Relationships Code for Electricity Distributors and Transmitters (the "**Code**" or "**ARC**") and the supporting rationale in the Notice of Proposed Amendments (the "**Notice**").

"enhance the development of a competitive market"

Erie Thames also agrees with the Board's proposal to eliminate the reference to the above as one of the principal objectives of the Code. Furthermore, Erie Thames supports the Board's position that this deletion is required due to the removal of its statutory objective to facilitate competition. As such, Erie Thames submits that the Board's reference to additional rationale for the elimination of this objective (i.e. the confusion created by this objective) is irrelevant.

"preventing a utility from acting in a manner that provides an unfair business advantage to an affiliate that is an energy service provider"

Erie Thames does not support the addition of the above objective as drafted. Erie Thames submits that any harm stemming from the above behaviour is adequately addressed via other mechanisms, including the rate making process and the prudence tests inherent therein.

Alternatively, Erie Thames argues that this added objective is too broad and overreaching because it describes a type of undesirable behaviour but fails to "clearly articulate" the harm it is intended to protect against, i.e. avoid real or potential harm to customers. In the Notice, the Board proposes to amend the definitions "in a manner that more clearly articulates the harm that the Electricity ARC is intended to protect against." The Board also argues the following in support of the above objective:

> The Board cannot agree that preventing…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. [emphasis added]

It is not inevitable, however, that the behaviour described above results in real or potential harm to the ratepayers. Therefore, Erie Thames suggests that this objective be amended to add a "no harm" element (and thereby explicitly incorporating the Board's rationale for this objective.) Erie Thames proposes the following underlined amendments to the objective:

> "preventing a utility from acting in a manner that provides an unfair business advantage to an affiliate that is an energy service provider in a manner that is or can be harmful to the interests of customers."

In the event that a "no harm" element is not incorporated, Erie Thames submits that this new objective is little more than a restatement of the competitive market objective and its primary purpose will be to protect unregulated and competitive third parties. As previously submitted, this is outside the purview of the Board.

Erie Thames agrees that anti-competitive behaviour, even if it results in "no harm" to utility customers, is a significant concern. However, as previously submitted to the Board, there are existing safeguards against such behaviour, including the Competition Bureau of Canada.

Finally, Erie Thames disagrees that Board's argument that this new objective is necessary to guard against customer confusion as this concern is adequately addressed in other sections, including the new customer confusion objective discussed above.

2. Section 1.2 – Definitions

Definition of "Affiliate Contract"

Erie Thames submits that this definition is too broad and the "Affiliate Contract" definition should be restricted to those contracts dealing with the exchange of goods or services.

Definition of "strategic business information"

The information included in this definition is inherent in most of the "shared corporate services" that find guidance and implicit support in the ARC. On its face, it appears that these provisions are contradictory in nature. Erie Thames is concerned that this broad restriction on information exchange would make sharing such corporate services impractical if not impossible. Erie Thames requests direction in this regard before being able to fully comment on the proposed addition.

Definition of a "reasonably competitive market"

Section 2.3 of the amended Code regularly references the existence of a "reasonably competitive market" but it provides no guidance as to its meaning. Erie Thames would appreciate guidance from the Board in this regard.

3. Section 2.3 – Transfer Pricing

As previously argued, Erie Thames submits that the rate making and review process is the appropriate mechanism for determining the reasonableness and prudence of transfer pricing and procedures.

Moreover, Erie Thames believes that the mandated transfer pricing requirements (i.e. competitive tendering and independent evaluation), which include little flexibility for alternate valuation measures, will result in added costs and regulatory burden for utilities (inordinately so for smaller utilities) and the Board. Erie Thames submits that this limited and prescriptive approach will result in increased rates and harm to the ratepayers. Therefore, in the absence of removing these requirements altogether, Erie Thames suggests that the Code include alternative methods for ensuring that market value is reflected (e.g. increase number of independent directors, market analysis conducted by independent third party, etc.).