

**IN THE MATTER OF the *Ontario Energy Board
Act, 1998, S.O. 1998, c.O.15, Sch. B;***

**AND IN THE MATTER OF a Proposal to Amend
the Affiliate Relationships Code for Electricity
Distributors and Transmitters.**

SUBMISSIONS

OF THE

SCHOOL ENERGY COALITION

1. On June 15, 2007 Board Staff published a report (the “Staff Report”) on the *Affiliate Relationships Code for Electricity Distributors and Transmitters* (the “Electricity ARC”). The School Energy Coalition provided detailed comments on July 20, 2007 with respect to the Staff Report. On September 19, 2007, the Board issued a Notice of Proposal to Amend a Code (the “Proposal”), in which the Board’s proposed changes to the Electricity ARC were set out. These are the submissions of the School Energy Coalition with respect to the Proposal.
2. While the School Energy Coalition from time to time in its submissions on matters before the Board will comment on the quality or utility of a particular staff document, we have never before commented on an official board document. In general, we don’t think it is our place to be “critics”, and we think our input would be unlikely to assist the Board. Instead, we try to stick to the policy issues, and to the implications of the amendments themselves.
3. However, in this case we want to make a more general comment, because in our view the Proposal, including both the amendments themselves and the accompanying explanatory document, is an exceptional example of the right way to promulgate amendments to a Code. While we do not agree with all of the choices the Board is proposing to make on the issues (see below), the use of an extensive and very clearly written rationale allows us, and any stakeholder, to understand exactly why the Board is proposing the changes it is. It will also be an invaluable interpretive tool when, in the future, the Electricity ARC has to be construed by regulated entities, intervenors, Board staff, and Board panel members. The inclusion of thorough explanatory material with regulatory changes has become more common in recent years, and we urge the Board to continue and expand this practice in future amendments to regulatory instruments.

4. That having been said, the balance of these submissions deals with the substantive policy issues, and the specific proposals and their impacts. We have tried not to repeat our comments on the Staff Report. To the extent that we have not commented on a subject area below, we continue to support the positions taken in our previous comments.
5. As a general comment, we note that the Proposal appears to us to be both balanced and fair, in that it considers the concerns of the distributors as expressed in many of their submissions, while still ensuring that the role of the Electricity ARC in protecting against harm is maintained and strengthened.

Utility Efficiency as a Code Objective

6. We agree with the Board's treatment of utility efficiency in this context, and in particular the reminder in the Proposal that utility efficiency is in any case a statutory objective of the Board.

Competition as a Code Objective

7. Similarly, we agree with the Board's treatment of competition as a Code objective. While we have noted previously that some of the same issues arise with respect to non-energy affiliates, but we understand that in this document the Board is focusing on its clear mandate to protect the energy marketplace.

Energy Service Provider Rules

8. No additional submissions.

Confidential Information

9. The Board's proposal to add the concept of Strategic Business Information, and to restrict its preferential supply by a regulated entity to a competitive affiliate, is a significant step forward in the management of utility/affiliate relationships.

Sharing of Employees and Physical Separation of Facilities

10. The Board has proposed to take significant steps to loosen the restrictions surrounding the use and location of shared utility/affiliate employees. As the Board will be aware from our previous submissions, we have serious concerns about these changes, and the potential for inappropriate behaviour and, more importantly, customer confusion, that may result. However, we also understand that the electricity distributors have much less affiliate activities than, say, the gas distributors, and they have a pressing need to maximize their operating

efficiencies in this period of sectoral transition and rationalization. It is, as they say, an issue on which reasonable people can differ.

11. Under the circumstances, though, we think the Board should consider some specific followup measures if the changes to the shared employee and physical separation rules are implemented. In particular, we propose that the Board implement a monitoring program directed at utilities that have shared utility/affiliate employees, or employees sharing common facilities, and the affiliate employees involved are engaged in marketplace activities. Of key importance, in our view, is the introduction of a series of public information surveys designed to track the level of customer confusion when dealing with energy service provider affiliates. The Board should, with existing public survey data, be able to establish a baseline, from which it can then assess on an ongoing basis whether the newly loosened rules have had a material impact on customer confusion. If not, great. If so, the Board can step in to adjust the rules in order to keep confusion down. We strongly recommend that the Board implement such a survey program at the same time as changing this part of the Electricity ARC rules.
12. We also believe that, as these rules are loosened, it would be appropriate for the Board to take steps to ensure that utility employees are clear on their obligations when they are in a shared resources environment with competitive affiliates. One possible way of doing this may be to require LDCs, at the time the Electricity ARC amendments are finalized, to communicate all of the changes, and the overall obligations of the utility and its employees in affiliate situations, to their employees in a formal letter, perhaps in a standard format approved by the Board. This is an opportunity for the Board to remind all utility personnel of these obligations, while at the same time demonstrate that the Board is being proactive in responding to the concerns both of the distributors and the ratepayers.

Independent Directors

13. We continue to be concerned that LDCs do not have majority independent boards. On the other hand, we note the Board's comment in the Proposal concerning compliance with the existing rules, and perhaps as that level of compliance is tightened up the beneficial effects of more director independence will be clearly apparent.

Transfer Pricing Rules

14. Please see our comments under Outsourcing, below.

Outsourcing Utility Activities to an Affiliate

15. We continue to be concerned with the potential for harm that arises when utilities have extensive freedom to contract out utility activities to affiliates. We have made extensive submissions on this subject in our comments on the Staff Report, and we will not repeat them here. Our submissions here deal with the details of the Board's proposal to tighten up the

rules in this area, but do not go to the more general policy issue of utility functions being carried out through unregulated affiliates.

16. We have two comments on the proposed changes:
 - a. First, the threshold levels appear to us to be quite low for large utilities. A \$5 million single transaction, or a transaction involving \$1 million a year of expenditures, is still significant enough to require competitive tendering, and we cannot identify obvious circumstances in which a contract of, say, \$4 million should be sole sourced to an affiliate. On the other side, the threshold levels appear to us to be quite high for small utilities. A single transaction of \$500,000 for a utility that has a \$2 million annual revenue should not be an exempt transaction, in our view. We believe that the Board should set two thresholds, one for utilities under \$50 million in revenue (we suggest \$50,000 per annum and \$250,000 one-time), and one for utilities over \$50 million in revenue (we suggest \$200,000 per annum and \$1 million one-time). This would simplify compliance, while still ensuring that large transactions are not exempt.
 - b. Second, the new Section 1.6.3 grandfathers contracts in place as of June 15, 2007. We are concerned that one-size-fits-all is not appropriate for grandfathering contracts that in most cases have not been subjected to any regulatory scrutiny. Therefore, we propose that, instead, the Board order that those contracts be grandfathered until the LDC's next cost of service proceeding. At that time, the utility would then be required to file the contract and propose a resolution, e.g. further grandfathering for a specific period, contract modification, or a new, ARC-compliant procurement process. This will allow the Board to apply grandfathering to these older contracts on a case by case basis.

Shared Corporate Services

17. No additional submissions.

Asset Transfer-Pricing Provisions

18. No additional submissions.

Exemption Process and Small Distributors

19. We agree with the Board's treatment of small distributors in the Proposal.
20. We remain convinced that exemptions should be granted primarily where the LDC can demonstrate that it has an alternate method of ensuring that the goals of the Electricity ARC are achieved. However, this philosophy, if accepted by the Board, can be implemented through decisions on ARC applications, rather than through a specific rule in the Electricity ARC.

Other Issues

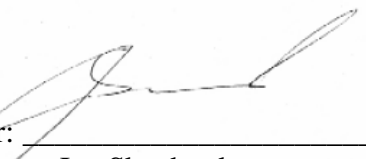
21. We have raised a number of other issues – Corporate Opportunities, Branding, and Market Control Activities – in our comments on the Staff Report that have not been dealt with expressly in the Proposal. While we understand the Board’s need to keep the Electricity ARC amendments focused, we are concerned that these issues should still be dealt with at the appropriate time. We therefore ask that the Board state at some point how, if at all, it feels these issues should be considered by the Board and moulded into policy decisions.

Conclusion

22. The School Energy Coalition appreciates the opportunity to participate in this consultation, and we hope that our input will assist the Board in considering these issues. If there are further steps in this process, or any followup process, we request the opportunity to participate in those steps or process as well.

All of which is respectfully submitted on behalf of the School Energy Coalition as of the 30th day of October, 2007.

SHIBLEY RIGHTON LLP

Per: 
Jay Shepherd