

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

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

**SUBMISSIONS
OF THE
HVAC 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 HVAC Coalition filed comments on July 20, 2007 with respect to the Staff Report. On September 19, 2007 the Board promulgated a Notice of Proposal to Amend a Code (the “Proposal”), proposing changes to the Electricity ARC that considered both the Staff Report and the many submissions of stakeholders on the issues. These are the submissions of the HVAC Coalition with respect to the Proposal.
2. In these comments, we have not repeated the submissions we made previously with respect to the Staff Report. In the course of seeking a balanced solution, the Board has declined to adopt a number of the recommendations made by HVAC Coalition in those previous submissions. Except where stated otherwise, below, HVAC Coalition continues to believe that the Board should implement those recommendations to ensure fair competition in the Ontario energy marketplace.
3. ***The Board’s Role.*** That having been said, HVAC Coalition notes that, in the amendments themselves, and in the accompanying reasons, the Board has strongly defended its own role in ensuring that the entities it regulates do not use their monopoly powers for inappropriate goals. Thus, while we would have preferred that more of our specific recommendations had been implemented, we believe that the Board has sent a clear signal to its regulated entities that abuses will not be tolerated. That is a very important step in protecting Ontario’s competitive energy marketplace.
4. ***General Anti-Abuse Rule.*** HVAC Coalition, in its earlier comments, proposed that the Board include a general rule prohibiting utility actions that reduce competition. We accept, however, the Board’s different approach to that issue, ie. clarifying that “providing an unfair business advantage” to an energy-related affiliate is one of the harms the Electricity ARC is intended to

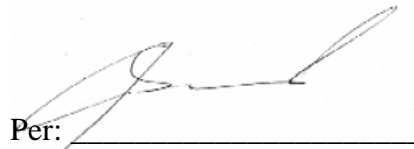
prevent. We recommend that the Board consider adjusting the activities of the Compliance Office to ensure that officers of that department are charged with the responsibility of monitoring all utility/affiliate actions that might be contrary to this objective, ie. not just those actions that offend the specific provisions of the Electricity ARC.

5. In this regard, while the Electricity ARC does not have a specific prohibition against restricted access to the electricity bill, the combination of the existing rules and licence conditions, and the proposed stronger objectives of the Electricity ARC, would appear to us to make the provision of bill access to competitive affiliates, in preference to third parties, inappropriate in most cases. In this regard, we would see the result as much like what has already occurred in the case of the gas distributors.
6. ***Strategic Business Information.*** The addition of this definition, and the related provisions prohibiting sharing of this valuable information, is a significant step forward in strengthening the Electricity ARC. We have heard from a number of distributors that this restriction makes it difficult for them to leverage their competitive businesses on the back of the utility, and they complain that this is a common practice in the unregulated marketplace. In our submission, their analogy to the unregulated marketplace is actually one of the reasons why this provision is required.
7. Where a corporate group is made up entirely of competitive entities, one can spend money to develop strategic business information for an affiliate, but the cost will either be borne by the shareholder or be built into competitively priced products. Since, at least in theory, competitive companies are price takers when it comes to competitive markets, every incremental dollar spent to assist an affiliate will ultimately be borne by the shareholder.
8. The same is not true when an affiliate is regulated. In that case, the utility typically sees itself as establishing rather than taking the price, and thus every dollar spent to assist an affiliate is ultimately borne by the customers. This problem can be solved by insisting that the shareholder (probably through the unregulated parent of the utility) bear the full cost. This amendment to the Electricity ARC would do exactly that.
9. We note that, even if the affiliate pays the full cost of developing the information, the fact that it was developed by the utility, or based on data supplied by the utility, is itself an advantage. The solution to this is to allow corporate groups that include a distributor to develop strategic information only outside of the utility, and only with the same access to utility data as other outsiders would have.
10. ***Co-Branding.*** The Board did not deal in its amendments or its accompanying explanatory document with the problem, raised by HVAC Coalition, of the use of co-branding between utility and unregulated affiliates to provide those affiliates with competitive advantage. We believe that it is appropriate for the Board to establish a process to consider this issue, whether or not it should end up being part of the Electricity ARC, or part of the Distribution System Code, or part of the distributors' licences, or even none of the above.

11. **Conclusion.** The HVAC Coalition very much appreciates the opportunity to participate in this consultation, and we hope our input provides a new perspective that is useful to the Board in its consideration of the issues.

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

SHIBLEY RIGHTON LLP

A handwritten signature in black ink, appearing to read "Jay Shepherd", is written over a horizontal line.

Per:

Jay Shepherd