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ONTARIO ENERGY BOARD

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October 26, 2007 *Oct 26/07*

VIA COURIER and E-FILING

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

EB 2007-0662

OEB BOARD SECRETARY	
File No:	Sub File: <i>5</i>
Panel	
Licensing	<i>JV, TP</i>
Other	
CO/04	

Attention: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Proposed Amendments to Affiliate Relationships Code For Electricity Distributors and Transmitters (EB-2007-0662)

Enclosed are three (3) copies of submissions filed on behalf of the Electrical Contractors Association of Ontario respecting the above noted matter.

An electronic copy has been sent via e-filing.

Yours truly,

MACLEOD DIXON LLP

Heather P.K. Landymore
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**SUBMISSIONS WITH RESPECT TO THE PROPOSED
AMENDMENTS TO THE AFFILIATE
RELATIONSHIPS CODE FOR ELECTRICITY
DISTRIBUTORS AND TRANSMITTERS**

THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO ("ECAO")

October 26, 2007

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I. Background to the ECAO

1. The Electrical Contractors Association of Ontario ("**ECAO**") is a not-for-profit corporation established to represent electrical contractors across Ontario.
2. ECAO is committed to addressing the needs of the industry by providing a variety of services directly to the membership, and by making representations on behalf of the industry to government and regulatory bodies.
3. ECAO's eight hundred and fifty (850) member contractors provide services in the institutional, commercial, industrial, residential and electrical utility construction and maintenance marketplace. ECAO's members are active in efficiently and effectively providing a broad range of electrical services including: the planning, siting, construction and maintenance of power lines, poles and transformers; the construction and maintenance of substations; the construction and maintenance of power generation equipment and facilities (powerhouses and all related inside and interconnection wiring); and the construction and maintenance of interconnection facilities.
4. As such, ECAO members have a direct and significant interest in the electrical construction and maintenance businesses housed within, or affiliated with, regulated electrical transmission and distribution utilities, and the appropriate regulation of such utilities vis-à-vis such competitive businesses. ECAO members also have a direct interest in the regulation of standards in respect of electrical transmission, distribution and related interconnection facilities.
5. ECAO is generally concerned with ensuring that the Ontario Government's commitment to an efficient hybrid electricity market is upheld and implemented. Specifically, ECAO is concerned with the negative impact on the electricity marketplace resulting from utility/utility-affiliate corporate expenditures and revenues associated with contestable business operations and related grid connection issues. ECAO views the Affiliate

Relationships Code for Electricity Distributors and Transmitters (the "**ARC**") as a critical tool in ensuring and enforcing a level playing field for local distribution companies' affiliate service providers and independent contractors in the electrical contracting marketplace.

II. Submission on the Proposed Amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters

6. ECAO's participation in this proceeding is in relation to the appropriate regulation of utilities and their affiliates, and the impact of their activities on competitive businesses. ECAO's submissions are based on the practical experience of its members as key participants in the competitive marketplace for contestable work.
7. ECAO has reviewed the proposed amendments to the ARC (the "**Amendments**"). ECAO supports many of the Amendments as proposed by the Ontario Energy Board (the "**Board**") subject to the comments outlined below, which include: (a) the need for a definition for employees that have access to confidential information; and (b) concerns regarding effective compliance mechanisms with respect to the revised ARC.

Section 1.1 - Purpose of the Code

8. The Board has proposed that the objectives section of the ARC should be amended by replacing "enhanc[ing] the development of a competitive market" with "preventing a utility from acting in a manner that provides an unfair business advantage to an affiliate that is an energy service provider". In view of the fact that the current definition of "energy service provider" has been retained, ECAO supports this amendment to the objectives of the ARC, as it clearly recognizes the importance of prohibiting a utility from using its monopoly position to gain an unfair advantage for its affiliates, and therefore promotes and protects fair competition in the market.

9. ECAO also supports the addition of the objective of "preventing customer confusion that may arise from the relationship between a utility and its affiliate", as it will enhance the protections against harm which would otherwise result from the utility/affiliate relationship.
10. With respect to economic efficiency, ECAO agrees with the Board's statement that "[p]romoting economic efficiency and cost effectiveness in the distribution and transmission sectors is a statutory objective of the Board, but it is not the primary purpose or objective" of the ARC, and supports the Board's decision not to include it as an objective of the ARC.

Section 1.2 - Definitions

11. ECAO supports the Board's proposal to retain the current definitions of "confidential information", and "energy service provider" as interpreted in:
 - (a) the Board's decision in EB-2006-0029, in which the Board stated that Lakeland Energy Ltd., an affiliate of Lakeland Power Distribution Ltd., was an "energy service provider" on the basis that it performed activities that were related to the supply of electricity, such as appliance sales, service, and rentals (i.e. hot water tanks), and streetlight maintenance; and
 - (b) Compliance Bulletin 200604, which provides the following definition of "energy service provider":

A key element of the ARC definition of the term "ESP" is the reference to involvement "in the supply of electricity ... or related activities". The definition is not limited to retailing or appliance rental activities, which are cited as examples only. I consider the provision of services related to the production or use of electricity to be activities related to the supply of electricity. Such services include, but are not limited to, generation, street lighting, sentinel lighting, water heater rentals and sales, metering, wholesale settlement, and billing. I would consider an affiliate providing any of these services, or any other services related to the production or use of electricity, to be an ESP.

Section 2.2 - Sharing of Services and Resources

12. ECAO understands that the Board is revising section 2.2.4 in order to better reflect the purpose of the sections on sharing of services and resources, and that the protections afforded by such sections are to be maintained.
13. ECAO submits that, for further clarity, the term "employees with access to confidential information" should be defined, and should include examples of employees that would fall within the meaning of this term, such as "an affiliate employee who completes the connection of a customer to the distribution system and who therefore cannot be involved in the provision of sub-station maintenance on equipment". This is consistent with Compliance Bulletin 200604 which provides the following examples of employees who have access to confidential information:

For example, an affiliate employee who completes the connection of a customer to the distribution system may not be involved in the provision of sub-station maintenance on equipment owned by customers who are located within the distributor's licensed service area. Similarly, an affiliate employee who provides metering and billing services for the distributor may not be involved in the provision of energy management services within the distributor's licensed service area. The restriction on involvement in both of these examples extends to unregulated service activities. The specific unregulated services are referred to for illustrative purposes only, and are examples of services where there could be a clear advantage to the affiliate from access to confidential information obtained through the provision of distribution services on behalf of the distributor.

Section 2.3 - Transfer Pricing

14. ECAO supports the amendments to the transfer pricing provisions of the ARC, and is of the view that strengthening the ARC transfer pricing provisions to align with the Affiliate Relationships Code for Gas Utilities ("**Gas ARC**") will better protect ratepayers.

Restriction of Provision of Strategic Business Information

15. ECAO supports the addition of a new section that would prohibit a utility from providing strategic business information to an affiliate that is an energy service provider. ECAO

agrees with the Board's view that this addition will assist in regulating utility conduct that can provide an unfair business advantage to an affiliate.

Other

16. Regulators generally agree that if oversight, enforcement and penalty standards are not included in codes of conduct such as the ARC, then it will be very difficult if not impossible to enforce compliance with the code.¹ Means of ensuring compliance have included periodic reporting requirements from utilities that assist in monitoring compliance, periodic audits and statements of the regulatory body's ability to levy penalties or fines.²
17. On this basis, ECAO submits that the Board should ensure that the affiliate-related information referred to in proposed section 2.3 is also reflected in section 2.3.4 of the Electricity Reporting and Record Keeping Requirements in order to ensure compliance with the provisions of this section.
18. The Electricity Reporting and Record Keeping Requirements should specifically provide that utilities must, upon request, supply the Board with:
 - (a) Affiliate Contracts;
 - (b) access protocols;
 - (c) business case analyses;
 - (d) independent evaluator reports;
 - (e) independent assessments of market price; and
 - (f) any other affiliate-utility related information.

¹ NARUC: Codes of Conduct Governing Competitive Market Developments in the Energy Industry: An Analysis of Regulatory Actions, November 2000 at 70.

² *Ibid.*

19. Further, given the number of utilities in Ontario, ECAO submits that utilities with affiliates should provide a brief report of affiliate-related activities on a yearly basis (in addition to the requirements of section 2.3.5 of the Electricity Reporting and Record Keeping Requirements), which would be made public. It is ECAO's view that this publicly-available self-reporting function would assist in ensuring compliance and would not result in undue cost. The report of affiliate-related activities should include:
- (a) the type of service, product, resource or use of assets outsourced by the utility;
 - (b) the value of such services, products, resources or use of assets;
 - (c) whether there is a market for such services, products, resources or use of assets; and
 - (d) a description of the competitive bidding process used to establish the market price.
20. Although the Gas ARC does not contain such requirements, the electricity sector in Ontario differs significantly from the gas sector. With over 80 electricity utilities in Ontario, the electricity sector has many more utilities subject to regulation than the gas sector, and therefore requires greater regulatory oversight. On this basis, it is appropriate that the ARC require these additional reporting requirements.

Conclusion

21. ECAO respectfully submits that the comments set out above will facilitate adherence to the ARC and compliance with the Board's objectives, protect ratepayers and encourage a level playing field for independent contractors in the electrical contracting marketplace.

22. ECAO thanks the Board for the opportunity to comment on the proposed Amendments.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS
26th DAY OF OCTOBER, 2007.**



Robert Frank
Macleod Dixon LLP
Counsel for ECAO