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NOTICE OF AMENDMENTS TO A RULE

AMENDMENTS TO THE AFFILIATE RELATIONSHIPS CODE FOR GAS UTILITIES

AND

NOTICE OF REVISED PROPOSAL TO AMEND A RULE

REVISED PROPOSED AMENDMENTS TO THE NATURAL GAS REPORTING & RECORD KEEPING REQUIREMENTS: RULE FOR GAS UTILITIES

BOARD FILE NO.: EB-2010-0248

To: All Natural Gas Utilities
All Licensed Generators
All Participants in Consultation Processes EB-2009-0411 and EB-2010-0248
All Other Interested Parties

Date: November 26, 2010

The Ontario Energy Board (the "Board") has today issued amendments to the Affiliate Relationships Code for Gas Utilities (the "ARC"), as indicated in section B below, pursuant to section 45 of the *Ontario Energy Board Act, 1998* (the "Act").

The Board is also giving notice under section 45 of the Act of revised proposed amendments to the Natural Gas Reporting & Record Keeping Requirements: Rule for Gas Utilities (the "RRR"), as indicated in section C below.

A. Background

On July 29, 2010, the Board issue a Notice of Proposal to Amend Rules (the "July Notice") in which the Board proposed amendments to the ARC and the RRR (the "July Proposed Amendments") to keep pace with the fact that the Province's largest natural gas utilities are now permitted to own and operate certain renewable and other generation facilities as well as energy storage facilities (collectively, "qualifying facilities"), and to support the Board's objective of promoting the use and generation of electricity from renewable energy sources.

Under the July Proposed Amendments to the ARC, the Board proposed that certain provisions of the ARC no longer apply in terms of the dealings between a natural gas utility and an affiliate in relation to activities associated with qualifying facilities. This approach reflected the Board's view that the potential for harm to ratepayers and the concept of an unfair business advantage arising from the affiliate relationship are no longer the same in a context where the natural gas utility itself can own and operate a qualifying facility as a non rate-regulated activity. It also reflected the Board's belief that the ARC should not drive business decisions by creating incentives that favour one ownership structure over another (utility-owned versus affiliate-owned).

Under the July Proposed Amendments to the RRR, the Board proposed that natural gas utilities provide advance notice to the Board of proposed qualifying facility investments, in order to assist the Board in its regulatory oversight of those utilities.

The Board received written comments in response to the July Notice from 4 interested parties; namely, two natural gas utilities and two representatives of ratepayers. These comments are available for viewing on the Board's website at www.oeb.gov.on.ca.

B. Adoption of July Proposed Amendments to the ARC with Correction

The Board has considered the comments received in response to the July Notice, and has determined that no material changes to the July Proposed Amendments to the ARC are required. The Board has therefore adopted the July Proposed Amendments to the ARC, with one correction identified below (the "Final ARC Amendments"). The Final ARC Amendments as adopted by the Board are set out in Attachment A to this Notice.

The remainder of this section provides a high-level summary of some of the more significant comments received on the July Proposed Amendments to the ARC and identifies the correction to the July Proposed Amendments to the ARC that the Board has made as part of the Final ARC Amendments.

1. General

One of the representatives of ratepayers was generally supportive of the July Proposed Amendments to the ARC. By contrast, the other representative of ratepayers expressed a number of concerns regarding the July Proposed Amendments to the ARC. Some of those concerns relate equally and more generally to issues associated with the ability of natural gas utilities to own and operate qualifying facilities themselves, and not more specifically to issues uniquely associated with affiliate transactions involving qualifying facilities. For example, this stakeholder commented that, rather than eliminating ARC protections, the Board should be concerned with the potential for regulated activities to be used to benefit a competitive business or with the potential for qualifying facility activities to be intermingled with regulated activities. As another example, this stakeholder commented that under the July Proposed Amendments to the ARC, natural gas utility personnel or affiliate personnel that are working with the ratepayer can use the information gathered for that purpose as part of their qualifying facility activities.

The Board remains of the view that the overall approach embodied in the July Proposed Amendments to the ARC is appropriate in a context where natural gas utilities are permitted to own and operate qualifying facilities. The Board also remains satisfied that the interests of ratepayers will be adequately protected by the continued application of a number of ARC provisions (including section 2.6.1

which prohibits the disclosure of confidential information to an affiliate without appropriate customer consent) and the accounting separation required by the Board's "Guidelines: Regulatory and Accounting Treatments for Natural Gas Utility-Owned Qualifying Facilities or Assets" (G-2010-0030) (the "Accounting Guidelines").

The same representative of ratepayers noted that a natural gas utility that is bidding to install a qualifying facility at the premises of the ratepayer may have information that other bidders do not have by reason of the utility's involvement with the ratepayer in conservation activities. According to this stakeholder, this could leave the ratepayer open to legal challenges and, to mitigate that risk, collaboration with the natural gas utility on conservation programs may have to be scaled back or a different (and potentially more expensive) level of disclosure would need to be provided to all bidders. The Board is confident that any such issues can be adequately addressed by ratepayers as they consider appropriate, and is not persuaded that concerns regarding the fairness of procurement processes are such as to warrant a change in the Board's overall approach.

The same representative of ratepayers also expressed a concern that the principles underlying the July Proposed Amendments to the ARC may be construed as opening the door for more aggressive and risky tax planning by natural gas utilities. The Board believes that, where relevant and appropriate, these issues can be addressed in the context of a proceeding relating to the setting of a natural gas utility's rates.

2. Interpretation (section 1.6)

Natural gas utilities expressed concern with the proposed amendment to section 1.6 of the ARC, and more specifically with the proposed removal of the reference to amendments to the ARC being made only in accordance with sections 45 and 46 of the Act. The Board confirms that this proposed amendment reflects the fact that the Act addresses the issue of the process by which the ARC is to be amended, and that in the Board's view this need not be repeated in the ARC itself.

3. Employee Sharing (new sections 2.2.3A and 2.2.3B)

A representative of ratepayers commented that the July Proposed Amendments to the ARC regarding employee sharing are not necessary for large natural gas utilities, and serve only to ensure the commingling of regulated and unregulated businesses to the potential detriment of customers of both. The Board notes that the Minister's Directive that essentially allows natural gas utilities to engage in qualifying facility activities does not preclude such "commingling", and is satisfied that the approach set out in the July Proposed Amendments to the ARC does not create incremental ratepayer risks in that regard that are not adequately addressed by the Accounting Guidelines.

The same stakeholder also commented that these provisions of the July Proposed Amendments to the ARC are problematic in that natural gas utilities would be allowed to have the same employee who controls access to a utility service be involved with customers on qualifying facility matters. This stakeholder expressed the view that this would implicitly permit a natural gas utility to, for example, restrict access to utility programs to those that have or are willing to engage in qualifying facility partnerships with the utility. The Board does not agree that this is the necessary implication of the July Proposed Amendments to the ARC, and also notes that under section 2.1.1 of the Board's Gas Distribution Access Rule, a natural gas utility is required to provide gas distribution services in a non-discriminatory manner.

4. Term of Affiliate Contracts (new section 2.3.1A)

A representative of ratepayers commented that the rationale for the Board's proposal to extend to 20 years the allowable term of an Affiliate Contract that relates to a qualifying facility was not clear. As stated in the July Notice, this July Proposed Amendment to the ARC reflects the fact that contracts issued by the Ontario Power Authority under the Feed-in Tariff program typically have a term of 20 years.

5. Business Case (new sections 2.3.2A and 2.3.3.3)

One of the July Proposed Amendments to the ARC was a proposal to eliminate the business case analysis requirement in relation to the outsourcing of activities that relate to qualifying facilities. The Board's rationale for that July Proposed Amendment to the ARC, as expressed in the July Notice, included the fact that

there is no regulatory requirement for a natural gas utility to do a business case analysis as a condition of engaging in qualifying facilities itself. A representative of ratepayers took issue with that view, noting that the first interrogatory in a natural gas utility's rate case would be a request for the business case underlying the utility's decision to engage in qualifying facility activities in order to ensure that the plan and analysis properly distinguished between regulated and unregulated activities.

The Board notes that the fact that an interrogatory may be filed in relation to qualifying activities does not render the business case a regulatory requirement. Whether or not a natural gas utility is properly accounting for its rate regulated and non rate-regulated activities in accordance with the Accounting Guidelines will be of concern to the Board, but a business case analysis may not be determinative of the matter.

The same stakeholder also commented that natural gas utilities that carry on their qualifying facility business through an affiliate will have no reason to purchase goods, services or the use of assets that are truly exclusive to a qualifying facility business because they do not have such a business themselves. The concern, as expressed by this stakeholder, is that rather than treat the new sections as not applying in any circumstances, natural gas utilities will seek to create a category of situations in which these exemptions are intended to apply. The Board is of the view that concerns regarding the potential scope of the July Proposed Amendment to the ARC in question are addressed by the proviso that the elimination of the business case requirement applies only to Affiliate Contracts that pertain exclusively to the ownership and operation of qualifying facilities.

6. Transfer Pricing (new section 2.3.9A)

A representative of ratepayers questioned the intention underlying the Board's approach to transfer pricing as reflected in the July Proposed Amendments to the ARC. This stakeholder noted that not only should the unregulated business consider the relationship between fully-allocated cost and market price in determining whether to in-source or out-source an activity, but on the regulated side the management of a natural gas utility should use its goods, services and assets to the best possible advantage, including consideration of the market.

This stakeholder raised, as an example, why management would rent space to an affiliate involved in qualifying facility activities at cost, rather than obtaining full market rent. According to this stakeholder, management of a natural gas utility should in all cases consider the most prudent use of resources, and should consider market prices where relevant to that decision.

As indicated in the July Notice, the Board's approach to transfer pricing is in keeping with the Accounting Guidelines, which require fully-allocated cost-based pricing in circumstances where a natural gas utility owns and operates a qualifying facility. Eliminating the requirement for market-based pricing for affiliate transactions associated with qualifying facility activities will better ensure that the provisions of the ARC are not driving business decisions relating to those activities, and in the Board's view will do so without incremental risk of harm to ratepayers.

In response to a comment from a representative of ratepayers, the Board has corrected the numbering of section 2.3.9A (incorrectly numbered as 2.3.94A in the July Proposed Amendments to the ARC).

7. Financial Transactions with Affiliates (new sections 2.4.1A, 2.4.1B and 2.4.3)

In the July Proposed Amendments to the ARC, the Board proposed that the maximum level of allowable investment in an affiliate whose business activities include owning one or more qualifying facilities be increased from 25% to 35% of the natural gas utility's total equity (proposed new section 2.4.1A). A natural gas utility recommended that the Board further increase that level of allowable investment from 35% to 50% of the utility's total equity. According to this stakeholder, such an increase would allow natural gas utilities to invest in more generation projects, in keeping with the government's policy objectives. This stakeholder also noted that the size and scale of electricity distributors (to which the 35% ceiling applies) varies widely, whereas the two larger natural gas utilities are both relatively large with widespread franchise areas. As such, this stakeholder suggested that the opportunities for qualifying facilities potentially available to the larger natural gas utilities will be relatively larger in number, size and scale.

New section 2.4.1A of the ARC applies to investments in an affiliate whose business activities include, but are not limited to, qualifying facility activities. In the Board's view, the risk profile of such an affiliate may differ appreciably from the risk profile of an affiliate whose sole business activity pertains to qualifying facilities, particularly given the nature of the contracts that are available under the Feed-in Tariff program. The Board is also not persuaded that the size of a natural gas utility should be determinative of the permitted level of investment in an affiliate. A given level of investment as a percentage of total equity, be it 35% or some other percentage, represents the same proportionate risk irrespective of utility size. The Board therefore remains of the view that a ceiling of 35% strikes an appropriate balance between the objective of promoting renewable generation and the need to ensure that ratepayers are not potentially exposed to undue harm.

A representative of ratepayers objected to the July Proposed Amendment to the ARC that would allow a natural gas utility to invest up to 100% of its total equity in an affiliate whose sole activity is the ownership and operation of one or more qualifying facilities (proposed new section 2.4.1B). This stakeholder noted that this appears to be mathematically incorrect and contrary to both the Board's policy on utility capitalization and the law in this area. In this stakeholder's view, allowing this level of investment is simply wrong in a context where ratepayers pay to have a utility properly financed. According to this stakeholder, if 100% of the equity of a natural gas utility is used to finance unregulated activities, the result is that the regulated activities are 100% debt financed and, if that is to the case, then ratepayers should only pay the cost of 100% debt financing, not the higher cost of equity. This stakeholder proposed that both this July Proposed Amendment to the ARC and the existing 25% rule should be replaced by a rule to the effect that the limit on the aggregate financing of both affiliates and unregulated businesses should be the amount by which the shareholder's actual equity exceeds the utility's deemed equity as calculated in accordance with the Board's rules.

The same representative of ratepayers also commented that the July Proposed Amendment to the ARC that would change the terms on which loans, investments or other financial support are provided to an affiliate by a natural gas utility (proposed new section 2.4.3) assumes that a utility has an unlimited right to use its creditworthiness to borrow for unregulated activities, which was not this

stakeholder's understanding. In this stakeholder's view, if a natural gas utility has such an unlimited right, the result will inevitably be to increase its cost of debt. According to this stakeholder, this July Proposed Amendment to the ARC would inappropriately allow extensive leveraging of unregulated activities at ratepayer expense.

The Board notes that the Minister's Directive that essentially allows natural gas utilities to engage in qualifying facility activities does not establish a limit on the investments that a natural gas utility can make in relation to its own qualifying facility activities nor does it preclude a natural gas utility from using its creditworthiness to borrow in furtherance of those activities. In that context, the July Proposed Amendments to the ARC do not, in the Board's view, create a risk of incremental harm to ratepayers. The Board also notes that concerns regarding a natural gas utility's cost of debt can be addressed in the context of a proceeding to set the utility's rates, if and where warranted. The alternative proposal suggested by this stakeholder in relation to permitted investments in an affiliate would fundamentally alter the financial transaction provisions of the ARC in a manner that the Board does not believe to be warranted in the context of this consultation.

8. Equal Access to Services (new section 2.5.2A)

In the context of this July Proposed Amendment to the ARC, a representative of ratepayers reiterated its concern that the bundling of qualifying facility proposals with, for example, conservation initiatives could seriously disadvantage customers or undermine the success of demand side management programs. This stakeholder recommended that, at the very least, a natural gas utility should remain prohibited from saying or implying that any utility service will be more readily available, better or less expensive if the customer also elects to obtain qualifying facility services.

As noted above, the Gas Distribution Access Rule requires natural gas utilities to provide access to gas distribution services in a non-discriminatory manner. In addition, the interests of ratepayers will continue to be protected by section 2.5.4 of the ARC, which requires a natural gas utility to take reasonable steps to ensure that an affiliate does not imply in its marketing material favoured treatment or preferential access to the utility's system. The Board is therefore

not persuaded that a change to its approach to the equal access to services provisions of the ARC is warranted.

9. Anticipated Costs and Benefits

The anticipated costs and benefits of the July Proposed Amendments to the ARC, as set out in the July Notice, apply equally to the Final ARC Amendments and interested parties should refer to the July Notice for further information in that regard.

10. Coming into Force

As stated in the July Notice, the Final ARC Amendments come into force on today's date, being the date on which they are published on the Board's website after having been made by the Board.

C. Revised Proposed Amendments to the RRR

1. Stakeholder Comments and Revised Proposed Amendments to the RRR

In the July Proposed Amendments to the RRR, the Board proposed that natural gas utilities provide advance notice to the Board of proposed qualifying facility investments.

A representative of ratepayers, while not opposed to the July Proposed Amendments to the ARC in relation to financial transactions with affiliates, noted that an investment in an affiliate that represents a significant proportion of a natural gas utility's equity does not guarantee the success of the affiliate. This stakeholder further noted that circumstances beyond the control of the utility may result in the failure of the affiliate and risk the financial stability of the utility. As such, this stakeholder commented that an "early warning system" should be in place, so that the Board can be in a position to ensure the continued viability of a natural gas utility.

By contrast, each of the natural gas utilities expressed concerns with the Board's proposed approach, including the following:

- it is difficult to predict a successful business relationship in advance of reaching an agreement, and an advance notice requirement could potentially have a detrimental effect on negotiations;

- counterparties would be deterred by a notice requirement, particularly when the parties have no idea of what the Board intends to do with the information;

- it is not clear why the Board needs this information;

- any unintended disclosure of confidential information is a concern for competitive reasons; and

- the July Proposed Amendments to the RRR are inconsistent with securities law requirements, which only require public disclosure of a "material change" and where such notice is not provided unless there is a high level of certainty about the change or the transaction has already occurred.

The Board notes that some of the concerns expressed by the natural gas utilities would apply equally to electricity distributors, who have a statutory obligation to provide advance notice of investments in qualifying facilities and who have been able to adequately manage that obligation. While some of the concerns expressed by the natural gas utilities are relevant in the context of qualifying facility transactions involving arms' length third parties, in the Board's view these concerns do not apply with the same strength to transactions where the utility is constructing its own qualifying facility or investing in an affiliate.

Nonetheless, the Board is persuaded that the objectives underlying the July Proposed Amendments to the RRR can be adequately achieved by an annual reporting requirement relating to a natural gas utility's qualifying facility activities and investments. The Board is therefore proposing revised amendments to the RRR (the "Revised RRR Amendments") as set out in Attachment B. The Board notes that, in some cases, the Revised RRR Amendments will simply require natural gas utilities to report on transactions with affiliates that they are already required to record under section 2.3 of the RRR.

The Board has also included, as part of the Revised RRR Amendments, a new proposed amendment to section 1.8 of the RRR to clarify when the proposed new reporting requirement would come into force.

2. Anticipated Costs and Benefits

The Revised RRR Amendments will continue to enable the Board to monitor the qualifying facility investments of natural gas utilities on a sufficiently timely basis. The Board anticipates that the administrative costs and resource requirements involved in reporting qualifying facility investments under the Revised RRR Amendments will be less than would have been the case under the July Proposed Amendments to the RRR.

3. Coming into Force

As was the case with the July Proposed Amendments to the RRR, the Board is proposing that the Revised RRR Amendments come into force on the day that they are published on the Board's website. The Board is also proposing that the Revised RRR Amendments apply to all filings due on or after that date.

4. Cost Awards

Cost awards will be available under section 30 of the Act to eligible persons in relation to the provision of comments on the Revised RRR Amendments as set out in Attachment B, **to a maximum of 7 hours**.

5. Invitation to Comment

All interested parties are invited to submit written comments on the Revised RRR Amendments as set out in Attachment B by **December 17, 2010**.

Three (3) paper copies of each filing must be provided, and should be sent to:

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319

2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

The Board requests that interested parties make every effort to provide electronic copies of their filings in searchable/unrestricted Adobe Acrobat (PDF) format, and to submit their filings through the Board's web portal at www.errr.oeb.gov.on.ca. A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at www.oeb.gov.on.ca, and fill out a user ID password request. Additionally, interested parties are requested to follow the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of filings may be filed by e-mail at boardsec@oeb.gov.on.ca**.**

Those that do not have internet access should provide a CD or diskette containing their filing in PDF format.

Filings to the Board must be received by the Board Secretary by **4:45 p.m.** on the required date. They must quote file number **EB-2010-0248** and include your name, address, telephone number and, where available, your e-mail address and fax number.

All written comments sent to the Board in response to this Notice will be available for viewing at the Board's offices and will be placed on the Board's website.

If the written comment is from a private citizen (i.e., not a lawyer representing a client, not a consultant representing a client or organization, not an individual in an organization that represents the interests of consumers or other groups, and not an individual from a regulated entity), before making the written comment available for viewing at the Board's offices or placing the written comment on the Board's website, the Board will remove any personal (i.e., not business) contact information from the written comment (i.e., the address, fax number, phone number, and e-mail address of the individual). However, the name of the individual and the content of the written comment will be available for viewing at the Board's offices and will be placed on the Board's website.

This Notice, including the Final ARC Amendments set out in Attachment A and the Revised RRR Amendments set out in Attachment B, will be available for public viewing on the Board's web site at www.oeb.gov.on.ca and at the offices of the Board during normal business hours.

All inquiries relating to the Final ARC Amendments set out in Attachment A should be directed to the Market Operations Hotline at 416-440-7604 or at market.operations@oeb.gov.on.ca.

If you have any questions regarding the Revised RRR Amendments set out in Attachment B, please contact Paul Gasparatto at 416-440-7724 or at paul.gasparatto@oeb.gov.on.ca.

The Board's toll free number is 1-888-632-6273.

DATED at Toronto, November 26, 2010
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Attachment A: Amendments to the Affiliate Relationships Code for Gas Utilities

Attachment B: Revised Proposed Amendments to the Natural Gas Reporting & Record Keeping Requirements: Rule for Gas Utilities

Attachment A

Amendments to the Affiliate Relationships Code for Gas Utilities

Note: The text of the amendments is set out in italics below, for ease of identification only.

1. Section 1.2 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after the definition of "physically separated":

   "qualifying facility" means a generation facility or an energy storage facility that is referred to, and meets the applicable requirements set out in, paragraph (a), (b) or (c) of the Directive issued to the Board by the Minister of Energy and Infrastructure and approved by Order in Council 1540/2009, including by virtue of the application of paragraph (e) of that Directive;

2. Section 1.6 of the Affiliate Relationships Code for Gas Utilities is deleted and replaced with the following:

   1.6.1 Except where expressly stated otherwise, any amendments to this Code shall come into force on the date on which the Board publishes the amendments by placing them on the Board's website after they have been made by the Board.

   1.6.2 Any matter under this Code requiring a determination by the Board may be determined without a hearing or through on oral, written or electronic hearing, at the Board's discretion.

   1.6.3 The Board may grant an exemption to any provision of this Code. An exemption may be made in whole or in part, and may be subject to conditions or restrictions.

3. Section 2.1 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after section 2.1.2:

2.1.2A Section 2.1.2 does not apply in the case of an affiliate that is an energy service provider and whose sole activity is the ownership and operation of one or more qualifying facilities.

4. Section 2.2 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after section 2.2.3:

2.2.3A Despite section 2.2.3, a utility may share employees that are directly involved in collecting, or have access to, confidential information with an affiliate whose sole activity at the time at which any such employee is being shared is the ownership and operation of one or more qualifying facilities.

2.2.3B Despite section 2.2.3, a utility may share employees that are directly involved in collecting, or have access to, confidential information with an affiliate whose activities at the time at which any such employee is being shared include but are not limited to the ownership and operation of one or more qualifying facilities, provided that:

(a) the employees to be shared are limited to employees whose sole or principal function is to construct, operate, maintain or repair the system by which the utility provides utility services; and

(b) the employees may only be shared in relation to activities associated with the ownership and operation of one or more qualifying facilities.

5. Section 2.2 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after section 2.2.4:

2.2.4A Despite section 2.2.4, a utility may share employees that control the access to utility services, that direct the manner in which utility

services are provided to customers, or that have direct contact with a customer of the utility service with an affiliate that is an energy service provider and whose sole activity at the time at which any such employee is being shared is the ownership and operation of one or more qualifying facilities.

6. Section 2.3 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after section 2.3.1:

2.3.1A Despite section 2.3.1, the term of an Affiliate Contract between a utility and an affiliate that is exclusively for the provision of services, products, resources or use of asset related to a qualifying facility may extend to a maximum of 20 years. Where an Affiliate Contract between a utility and an affiliate is for the provision of services, products, resources or use of asset that relates to, among other things, a qualifying facility, only that portion of the Affiliate Contract that relates to a qualifying facility may have a term that extends to a maximum of 20 years.

7. Section 2.3 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after section 2.3.2:

2.3.2A Despite section 2.3.2, a utility shall not be required to undertake a business case analysis prior to entering into an Affiliate Contract for the receipt of a service, product, resource or use of asset that it currently provides to itself and that pertains exclusively to the ownership and operation of one or more qualifying facilities.

8. Section 2.3 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after section 2.3.3.2:

2.3.3.3 Section 2.3.3.2 does not apply to a service, product, resource or use of asset that pertains exclusively to the ownership and operation of one or more qualifying facilities.

9. Section 2.3 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after section 2.3.9:

Qualifying Facilities

2.3.9.A For a service, product, resource or use of asset that pertains exclusively to the ownership and operation of one or more qualifying facilities, fully-allocated cost-based pricing (as calculated in accordance with section 2.3.10 or 2.3.11) may be applied between a utility and an affiliate in lieu of applying the transfer pricing provisions of section 2.3.4 or section 2.3.9.

10. Section 2.4 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after section 2.4.1:

2.4.1A Despite section 2.4.1, a utility that has an affiliate that owns one or more qualifying facilities may invest in or provide guarantees or any other form of financial support to its affiliates in an amount that, on an aggregated basis over all transactions with all affiliates, would equal an amount up to but not exceeding 35% of the utility's total equity.

2.4.1B Despite sections 2.4.1 and 2.4.1A, a utility may invest in or provide guarantees or any other form of financial support in any amount to an affiliate whose sole activity, at the time the investment is made or financial support is provided, is the ownership and operation of one or more qualifying facilities, subject only to the limitation that in no event may the utility's investments or financial support be in an amount that, on an aggregated basis over all transactions with all affiliates, would equal an amount that exceeds 100% of the utility's total equity.

11. Section 2.4 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after section 2.4.2:

2.4.3 Despite section 2.4.2, any loan, investment or other financial support provided to an affiliate by a utility may be provided on terms no more favourable than what the utility could obtain directly for itself in the capital markets if the loan, investment or

other financial support is for the purpose of financing the ownership of one or more qualifying facilities.

12. Section 2.5 of the Affiliate Relationships Code for Gas Utilities is amended by adding the following immediately after section 2.5.2:

2.5.2A Sections 2.5.1 and 2.5.2 do not apply in respect of the activities of an affiliate that is an energy service provider that are related to the ownership and operation of qualifying facilities.

Attachment B

Revised Proposed Amendments to the Natural Gas Reporting & Record Keeping Requirements: Rule for Gas Utilities

Note: The text of the proposed amendments is set out in italics below, for ease of identification only.

1. Section 1.8 of the Natural Gas Reporting & Record Keeping Requirements: Rule for Gas Utilities is amended by adding the following immediately after the second paragraph of that section:

   Sections 2.1.16 and 2.1.17 of this Rule, made by the Board on [insert date], come into force on [insert date] and are applicable to all filings due on or after that date.

2. Section 2.1 of the Natural Gas Reporting & Record Keeping Requirements: Rule for Gas Utilities is amended by adding the following immediately after section 2.1.15:

   2.1.16 A utility shall provide, in the form and manner required by the Board, annually, by the last day of the fourth month after the financial year end, the following information regarding activities associated with qualifying facilities:

   (a) a list of any transaction(s) in which the utility has invested in or provided guarantees or other form of financial support to an affiliate in the preceding financial year if the transaction(s) resulted in the utility investing between 25% and 35% of the utility's total equity on an aggregated basis over all other transactions with all affiliates, including:

   i. the name of the affiliate(s) and the business activity(ies) of the affiliate(s) at the relevant time;

ii. the nature and dollar value of the investment(s), guarantee(s) or other form of financial support and, where applicable, the manner in which the utility financed each investment, guarantee or other form of financial support; and

iii. the percentage of the utility's total equity that is represented by the aggregate of the investment(s), guarantee(s) or other form of financial support over all transactions with all affiliates;

(b) a list of any transaction(s) in which the utility has invested in or provided guarantees or other form of financial support to an affiliate in the preceding financial year if the transaction(s) resulted in the utility investing more than 35% of the utility's total equity, on an aggregated basis over all other transactions with all affiliates, including:

i. the name of the affiliate(s) and the business activity(ies) of the affiliate(s) at the relevant time;

ii. the nature and dollar value of the investment(s), guarantee(s) or other form of financial support and, where applicable, the manner in which the utility financed each investment, guarantee or other form of financial support; and

iii. the percentage of the utility's total equity that is represented by the aggregate of the investment(s), guarantee(s) or other form of financial support over all transactions with all affiliates;

(c) the number of qualifying facility investments made by the utility in the preceding financial year by direct or indirect acquisition or construction, and the following information for each such qualifying facility investment:

i. the method of financing of the investment;

ii. the dollar value of the investment;

iii. the percentage of the utility's total equity that is represented by the investment; and

iv. whether the qualifying facility is or is intended to be the subject of a contract under the Feed-in Tariff program.

2.1.17 For the purposes of section 2.1.16, a "qualifying facility" means a generation facility or an energy storage facility that is referred to, and meets the applicable requirements set out in, paragraph (a), (b) or (c) of the Directive issued to the Board by the Minister of Energy and Infrastructure and approved by Order in Council 1540/2009, including by virtue of paragraph (e) of that Directive.