

Attachment A

Revised Proposed Amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters

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

1. Section 1.1 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted and replaced with the following:

This Code sets out rules that govern the conduct of utilities as that conduct relates to their respective affiliates, with the objective of:

- a) *protecting ratepayers from harm that may arise as a result of dealings between a utility and its affiliate;*
- b) *preventing a utility from cross-subsidizing affiliate activities;*
- c) *protecting the confidentiality of information collected by a utility in the course of provision of utility services;*
- d) *ensuring there is no preferential access to utility services;*
- e) *preventing a utility from acting in a manner that provides an unfair business advantage to an affiliate that is an energy service provider; and*
- f) *preventing customer confusion that may arise from the relationship between a utility and its affiliate.*

2. Section 1.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended as follows:

- i by deleting the word “code” in the first line immediately following the heading “Definitions” and replacing it with the word “Code”;
- ii by deleting the definitions of the following terms: “Director”, “fair market value”, “licensee”, “marketing” and “Municipal utility”;

- iii by deleting the definition of “affiliate” and replacing it with the following:

“affiliate”, with respect to a corporation, has the same meaning as in the Business Corporations Act (Ontario);

- iv by adding the following immediately after the definition of “affiliate”:

“Affiliate Contract” means any contract between a utility and an affiliate, and includes a Services Agreement;

- v by amending the definition of “confidential information” by adding the phrase “smart sub-metering provider,” immediately after the word “specific”;

- vi by adding the following immediately after the definition of “confidential information”:

“direct costs” means costs that can reasonably be identified with a specific unit of product or service or with a specific operation or cost centre;

“distribute” means to convey electricity at voltages of 50 kilovolts or less;

- vii by deleting the definition of “distribution system” and replacing it with the following:

“distribution system” means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose;

- viii by deleting the definition of “energy service provider” and replacing it with the following:

“energy service provider” means a person, other than a utility or a municipal corporation, involved in the supply of electricity or gas or related activities, including retailing of electricity, marketing of natural gas, generation of electricity, energy management services, demand-side management programs, street lighting services, sentinel lighting services, metering (including smart sub-metering that is the subject of the Smart Sub-Metering Code and wholesale metering), billing for electricity or natural gas services and appliance or water heater sales, service and rentals;

- ix by adding the following immediately after the definition of “energy service provider”:

“fully-allocated cost” means the sum of direct costs plus a proportional share of indirect costs;

“indirect costs” means costs that cannot be identified with a specific unit of product or service or with a specific operation or cost centre, and include but are not limited to overhead costs, administrative and general expenses, and taxes;

- x by adding the following immediately after the definition of “licence”:

“market price” means the price reached in an open and unrestricted market between informed and prudent parties, acting at arm’s length and under no compulsion to act;

- xi by amending the definition of “Rate Order” by deleting the word “licensee” and replacing it with the word “utility”;

- xii by amending the definition of “Services Agreement” by deleting the word “affiliate(s)” and replacing it with the word “affiliate”;

- xiii by adding the following immediately after the definition of “Services Agreement”:

“shared corporate services” means business functions that provide shared strategic management and policy support to the corporate group of which the utility is a member, relating to legal, regulatory, procurement services, building or real estate support services, information management services, information technology services, corporate administration, finance, tax, treasury, pensions, risk management, audit services, corporate planning, human resources, health and safety, communications, investor relations, trustee, or public affairs;

“smart sub-metering provider” has the meaning given to it in the Smart Sub-metering Code;

“system planning information” means information pertaining to (i) the planning of a distribution system, including distribution system development or reinforcement plans, equipment acquisitions and work management plans, or (ii) the planning of systems involved in work management or of systems involved in the provision of customer service, including billing systems and call centre operations;

- xiv by amending the definition of “transmission system” by deleting the phrase “at voltages of 50 kilovolts or greater”;
- xv by adding the following immediately after the definition of “transmission system”:

“transmit” means to convey electricity at voltages of more than 50 kilovolts;

- xvi by amending the definition of “utility” by deleting the phrase “, for the purpose of this Code,” and by adding the word “electricity” immediately before the word “distributor”;
- xvii by adding the following immediately after the definition of “utility”:

“utility asset” means tangible or intangible property included in the utility’s rate base;

“utility revenue” means, in relation to a distributor, its distribution revenue and, in relation to a transmitter, its transmission revenue; and

- xviii by deleting the definition of “utility services” and replacing it with the following:

“utility services” means the services provided by a utility for which a rate or charge has been approved by the Board, and includes a distributor’s obligation to sell electricity pursuant to section 29 of the Electricity Act,1998.

- 3. The heading of section 1.3 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended by deleting the letter “s” at the end of the word “Interpretations”.
- 4. Section 1.4 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted and replaced with the following:

This Code applies to utilities licensed under Part V of the Act.
- 5. Section 1.5 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended as follows:
 - i by deleting the phrase “The Affiliate Relationships” and replacing it with the word “This”; and

- ii by deleting the phrase “distributor’s or transmitter’s” and replacing it with the word “utility’s”;
6. The heading of section 1.6 of the Affiliate Relationships Code for Electricity Distributors and Transmitters and section 1.6 of the Affiliate Relationships Code for Electricity Distributors and Transmitters are deleted and replaced with the following:
- 1.6 Amendments to this Code and Determinations by the Board**
- 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 web site after they have been made by the Board.*
- 1.6.2 *The following amendments to this Code made by the Board on [insert date] come into force on the date that is three months from the date on which the Board publishes the amendments by placing them on the Board’s web site after they have been made by the Board:*
- (a) *the amendment to section 1.2 deleting the definition of “fair market value”; and*
 - (b) *the amendments to section 2.3, other than the amendments adding sections 2.3.4.1 and 2.3.4.2.*
- 1.6.3 *The amendments to this Code made by the Board on [insert date] do not apply to an Affiliate Contract that was in effect on September 19, 2007 until such time as the initial term of such Affiliate Contract expires.*
- 1.6.4 *Any matter under this Code requiring a determination by the Board may be determined without a hearing or through an oral, written or electronic hearing, at the Board’s discretion.*
7. Section 2.1.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted.
8. Section 2.1.3 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is renumbered as section 2.1.2.
9. Section 2.1.4 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted.

10. The heading of section 2.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted and replaced with the following:

Providing or Receiving Services, Resources, Products or Use of Asset

11. Section 2.2.1 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended by deleting the first sentence and replacing it with the following:

Where a utility provides a service, resource, product or use of asset to an affiliate or receives a service resource , product or use of asset from an affiliate, it shall do so in accordance with a Services Agreement, the terms of which may be reviewed by the Board to ensure compliance with this Code.

12. Section 2.2.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted and replaced with the following:

2.2.2 Where a utility shares information services with an affiliate, all confidential information must be protected from access by the affiliate. Access to a utility's information services shall include appropriate computer data management and data access protocols as well as contractual provisions regarding the breach of any access protocols. A utility shall, if required to do so by the Board, conduct a review of the adequacy, implementation or operating effectiveness of the access protocols and associated contractual provisions which complies with the provisions of section 5970 of the CICA Handbook. A utility shall also conduct such a review when the utility considers that there may have been a breach of the access protocols or associated contractual provisions and that such review is required to identify any corrective action that may be required to address the matter. The utility shall comply with such directions as may be given by the Board in relation to the terms of the section 5970 review. The results of any such review shall be made available to the Board.

13. Section 2.2.3 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted and replaced with the following:

2.2.3 A utility shall not share with an affiliate that is an energy service provider employees that are directly involved in collecting, or have access to, confidential information.

14. Section 2.2.4 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted.
15. Section 2.2.5 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is renumbered as section 2.2.4 and is deleted and replaced with the following:

2.2.4 In the event of an emergency situation a utility may, without a Services Agreement, provide a service, resource, product or use of asset to, or receive a service, resource, product or use of asset from, an affiliate which is also a utility.

16. Section 2.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended by adding the following new section 2.2.5:

2.2.5 The transfer pricing rules set out in section 2.3 do not apply when a utility provides a service, resource, product or use of asset to, or receives a service, resources, product or use of asset from, an affiliate in an emergency situation; a reasonable fully-allocated cost-related price shall be determined afterwards by the parties.

17. Section 2.3 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended by deleting sections 2.3.1, 2.3.2, 2.3.3 and 2.3.4 and replacing them with the following:

2.3.1 Term of Contracts with Affiliates

2.3.1.1 The term of an Affiliate Contract between a utility and an affiliate shall not exceed five years, unless otherwise approved by the Board.

2.3.2 Outsourcing to an Affiliate

2.3.2.1 If a utility intends to enter into an Affiliate Contract for the receipt of a service, product, resource, or use of asset that it currently provides to itself, the utility shall first undertake a business case analysis, unless the Affiliate Contract would have an annual value of less than \$100,000 or 0.1% of the utility's utility revenue, whichever is greater. Where an Affiliate Contract has a term of more than one year, the annual value of the Affiliate Contract shall be determined by dividing the total value of the Affiliate Contract by the number of years in the term.

- 2.3.2.2 *For the purposes of section 2.3.2.1, the business case analysis shall contain (a) description of relevant utility needs on a per-service basis, (b) identification of the options available internally or externally from an affiliate or third party, (c) economic evaluation of all available options including the utility's current fully-allocated cost (which may include a return on the utility's invested capital equal to the approved weighted average cost of capital), (d) explanation of the selection criteria (including any non-price factors to be taken into account), (e) estimate of any benefits to the utility's Ontario ratepayers from outsourcing, and (f) justification of why any separate items were bundled together when considered for outsourcing.*

2.3.3 Where a Market Exists

- 2.3.3.1 *Where a reasonably competitive market exists for a service, product, resource or use of asset, a utility shall pay no more than the market price when acquiring that service, product, resource or use of asset from an affiliate.*
- 2.3.3.2 *A fair and open competitive bidding process shall be used to establish the market price before a utility enters into or renews an Affiliate Contract under which the utility is acquiring a service, product, resource or use of asset from an affiliate.*
- 2.3.3.3 *Despite section 2.3.3.2, where satisfactory benchmarking or other evidence of market price is available, a competitive tendering or bidding process is not required to establish the market price for a contract with an annual value of less than \$100,000 or 0.1% of the utility's utility revenue, whichever is greater. Where an Affiliate Contract has a term of more than one year, the annual value of the Affiliate Contract shall be determined by dividing the total value of the Affiliate Contract by the number of years in the term.*
- 2.3.3.4 *Where the value of a proposed contract over its term exceeds \$500,000 or 0.5% of the utility's utility revenue, whichever is greater, a utility shall not award the contract to an affiliate before an independent evaluator retained by the utility has reported to the utility on how the competing bids meet the criteria established by the utility for the competitive bidding process.*
- 2.3.3.5 *The Board may, for the purposes of sections 2.3.3.3 and 2.3.3.4, consider more than one Affiliate Contract to be a single Affiliate Contract where they have been entered into for the purpose of*

setting the contract values at levels below the threshold level set out in section 2.3.3.3 or 2.3.3.4.

- 2.3.3.6** *Where a reasonably competitive market exists for a service, product, resource or use of asset, a utility shall charge no less than the greater of (i) the market price of the service, product, resource or use of asset or (ii) the utility's fully allocated cost to provide the service, product, resource or use of asset, when selling that service, product, resource or use of asset to an affiliate.*

2.3.4 *Where No Market Exists*

- 2.3.4.1** *Where it can be established that a reasonably competitive market does not exist for a service, product, resource or use of asset that a utility acquires from an affiliate, the utility shall pay no more than the affiliate's fully-allocated cost to provide that service, product, resource or use of asset. The fully-allocated cost may include a return on the affiliate's invested capital. The return on invested capital shall be no higher than the utility's approved weighted average cost of capital.*

- 2.3.4.2** *Where a reasonably competitive market does not exist for a service, product, resource or use of asset that a utility sells to an affiliate, the utility shall charge no less than its fully-allocated cost to provide that service, product, resource or use of asset. The fully-allocated cost shall include a return on the utility's invested capital. The return on invested capital shall be no less than the utility's approved weighted average cost of capital.*

- 2.3.4.3** *Where a utility pays a cost-based price for a service, resource, product or use of asset that is obtained from an affiliate, the utility shall obtain from the affiliate, from time to time as required to keep the information current, a detailed breakdown of the affiliate's fully-allocated cost of providing the service, resource, product or use of asset.*

2.3.5 *Shared Corporate Services*

- 2.3.5.1** *For shared corporate services, fully-allocated cost-based pricing (as calculated in accordance with sections 2.3.4.1 and 2.3.4.2) may be applied between a utility and an affiliate in lieu of applying*

the transfer pricing provisions of section 2.3.3.1 or section 2.3.3.6, provided that the utility complies with section 2.3.4.3.

2.3.6 *Transfer of Assets*

2.3.6.1 If a utility sells or transfers to an affiliate a utility asset, the price shall be the greater of the market price or the net book value of the asset.

2.3.6.2 Before selling or transferring to an affiliate a utility asset with a net book value that exceeds \$100,000 or 0.1% of the utility's utility revenue, whichever is greater, the utility shall obtain an independent assessment of its market price.

2.3.6.3 If a utility purchases or obtains the transfer of an asset from an affiliate, the price shall be no more than the market price.

2.3.6.4 Before a utility purchases or obtains the transfer of an asset from an affiliate with a net book value that exceeds \$100,000 or 0.1% of the utility's utility revenue, whichever is greater, the utility shall obtain an independent assessment of its market price.

2.3.6.5 The Board may, for the purposes of sections 2.3.6.2 and 2.3.6.4, consider more than one asset transaction to be a single transaction where the transactions have been entered into for the purpose of setting the transfer prices at levels below the threshold level set out in section 2.3.6.2 or 2.3.6.4.

2.3.7 *Transfer Price Established by Law or Code*

2.3.7.1 Where an Act or regulation, or a code established by the Board, prescribes the amount to be charged by or to a utility in relation to the provision or receipt of a service, product, resource or use of asset, that Act, regulation or Code shall prevail over the requirements of sections 2.3.3 to 2.3.5 to the extent of any inconsistency.

18. Section 2.5.4 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended as follows:

- i by adding the phrase "or utility services" to the end of the first sentence; and

- ii by deleting the word “Director” in paragraph (c) and replacing it with the word “Board”.
- 19. Section 2.5.6 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is amended as follows:
 - i by deleting the phrase “transmission and distribution” and replacing it with the phrase “transmission or distribution”; and
 - ii by adding the phrase “by the utility” immediately after the phrase “processed and provided”.
- 20. Section 2.5.7 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted.
- 21. Section 2.6 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted and replaced with the following:

2.6 Confidentiality of Confidential Information and Restriction on Provision of System Planning Information

2.6.1 A utility shall not release to an affiliate confidential information relating to a smart sub-metering provider, wholesaler, consumer, retailer or generator without the consent of that smart sub-metering provider, consumer, retailer or generator.

2.6.2 A utility shall not disclose confidential information to an affiliate without the consent in writing of the smart sub-metering provider, wholesaler, consumer, retailer or generator, as the case may be, except to the extent permitted by the utility’s licence or where confidential information is required to be disclosed:

- (a) for billing, settlement or market operation purposes;*
- (b) for law enforcement purposes;*
- (c) for the purpose of complying with any legislative or regulatory requirement; or*
- (d) for the processing of past due accounts of the smart sub-metering provider, wholesaler, consumer retailer or generator, as the case may be, which have been passed to a debt collection agency.*

2.6.3 Confidential information may be disclosed where the information has been sufficiently aggregated such that information pertaining to any

individual smart sub-metering provider, wholesaler, consumer, retailer, or generator cannot reasonably be identified. If such information is aggregated it must be disclosed on a non-discriminatory basis to any party requesting the information.

2.6.4 Subject to section 2.6.5, a utility shall not provide system planning information to an affiliate that is an energy service provider.

2.6.5 A utility may provide system planning information to an affiliate that is an energy service provider:

- (a) if the system planning information is made available to non-affiliated third parties at the same time, or has previously been made available to non-affiliated third parties, on a non-confidential basis in substantially the same form and on the same terms and conditions as it is made available to the affiliate;*
- (b) if the system planning information is, at the time of provision to the affiliate, publicly available in substantially the same form as it is made available to the affiliate; or*
- (c) for the purposes of complying with any legislative or regulatory requirement.*

22. Section 2.8 of the Affiliate Relationships Code for Electricity Distributors and Transmitters is deleted.