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VIA EMAIL AND COURIER

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File 15812

Ontario Energy Board
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Attention: Kirstin Walli, Board Secretary

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(1934 - 2006)

Dear Ms. Walli:

Re: Board File No. EB-2007-0662 Request for Comment re: Board's Revised Proposed Amendments to the Affiliate Relationships Code for Electricity Transmitters and Distributors

Please accept the following as the comments filed on behalf of the Power Workers' Union ("PWU") with respect to the Board's Revised Proposed Amendments to the Affiliate Relationships Code for Electricity Transmitters and Distributors (the "Proposed Amendments"), dated February 11, 2008.

The PWU's comments with respect to the current iteration of the Proposed Amendments are limited to the provisions of the proposed paragraph 2.3.3.6. This provision deals with the restrictions on pricing of products and services by an LDC to an affiliate, in circumstances where a "reasonably competitive market" for those goods or services exists. The provisions of the currently proposed paragraph 2.3.3.6 read as follows:

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.

The PWU acknowledges that the current proposed revision constitutes an improvement over the both the existing Code and prior proposed revisions, in the sense that it recognizes, for the first time, the importance of the LDC's cost of the service, product, resource or use of asset, even in cases where a competitive market exists. From the PWU's perspective, however, the proposed revision does not go far enough.

The PWU submits that from the perspective of the LDC, and more importantly, the LDC's customers, the market price is an irrelevant consideration for the purposes of sales of products and services to third parties, including affiliates. In

cases where the market price of the product or service is higher the LDC's cost, it is not clear why the LDC is prohibited from selling to its affiliate at below the market price, so long as the LDC at least recovers its costs. If an LDC has natural cost advantages over market competitors, there is no reason it should not be able to exploit those cost advantages. Any such sales (i.e. sales at greater than the LDC's costs, even if lower than the market price) will benefit LDC ratepayers by contributing incremental revenues and make more efficient use of the LDC's embedded costs.

The only apparent justification from prohibiting sales by an LDC to an affiliate at prices above cost but below the market price is that potential competitors of the LDC may be shut out of such sales, presumably retarding the development of a the competitive market for such goods and services. The PWU submits this justification is simply not valid. To prohibit an LDC from selling at a price which is above its cost is a *de facto* subsidy to the LDC's market competitors. It is in no one's interest to undertake an economic development program whose existence is premised on a direct subsidy program.

Moreover, to the extent the development of a competitive market for services is the justification for the restrictions on LDC pricing, then presumably the same justification would be equally applicable for similar sales by LDC's to *non-affiliates*. No such restrictions exist.

It is therefore submitted that in the case of sales by an LDC to an affiliate the market price standard is an inappropriate basis for costing. For all such sales, the appropriate standard is that the sales should be permitted so long as the price is no less than the LDC's costs, regardless of whether the price is higher or lower than the market price. As a result, the PWU submits that paragraph 2.3.3.6 of the proposed revisions should be further revised to read as follows:

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 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.

We trust the Board will find these comments to be of assistance.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

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