Aiken & Associates
578 McNaughton Ave. West
Chatham, Ontario, N7L 4J6

Phone: (519) 351-8624
Fax: (519) 351-4331
E-mail: raiken@xcelco.on.ca

July 18, 2007

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

Re: EB-2007-0662 – LPMA Comments on Staff Research Paper" Affiliate Relationships Code for Electricity Distributors and Transmitters

Please find attached three copies of the comments of the London Property Management Association on the EB-2007-0662 Staff Research Paper dated June 15, 2007.

Sincerely

Randy Aiken

Randy Aiken
Aiken & Associates

Attachment

LONDON PROPERTY MANAGEMENT ASSOCIATION COMMENTS ON STAFF RESEARCH PAPER ON THE AFFILIATE RELATIONSHIPS CODE FOR ELECTRICITY DISTRIBUTORS AND TRANSMITTERS

The comments of the London Property Management Association ("LPMA") have been organized around the questions provided in Section 1.1 of the Staff Research Paper dated June 15, 2007. General comments have also been provided.

General Comments

LPMA believes that the Affiliate Relationships Code ("ARC") should be designed with a number of purposes in mind. The first is the protection of ratepayers of regulated monopolies to ensure that ratepayers are not paying more than they should in the short term because the regulated utility uses services from an unregulated affiliate. Second, ratepayers should not be cross-subsidizing any affiliate because this could ultimately reduce competition in the long term and drive up costs for ratepayers. Third, utilities should not be able to force ratepayers to use specific service providers, such as an affiliate, through service conditions. Again, this limits competition, drives up costs and unfairly rewards affiliate service providers.

The Board should also be aware that the greater the sharing between an affiliate and a utility, the greater the regulatory cost associated with reviewing all such arrangements and their costs during cost of service rebasing hearings. Distributors should also be aware of the costs associated with providing and substantiating this information as part of a cost of service application.

In addition, LPMA generally believes that wherever possible, the Electricity ARC and the Gas ARC should be the similar, if not the same. The Gas ARC has evolved over time and has the benefit of detailed scrutiny by the Board, utilities and intervenors over a number of years and through a number of processes. Consistency between the gas and electricity sectors is important since it is often the case that customers are ratepayers of both an electric and a natural gas distributor.

Throughout the Staff Research Paper there are numerous comments about the potential for increased compliance costs. However, there has been no comprehensive analysis about the potential savings to ratepayers that may result from the increased compliance costs. Nor is there any insight into the magnitude of any potential increase in compliance costs. LPMA expects that the compliance costs would be minimal and many would be of a one-time nature. The benefits to ratepayers, on the other hand, could be significant and are likely to accrue over a number of years.

1. Does utility efficiency belong in the Electricity ARC as a code objective?

Efficiency should be described as one of the factors that should be taken into account in the development and application of the Electricity ARC rules. However, it should not be a primary factor. It should also specify any environment in which inter-affiliate economies and efficiencies can occur should be for the mutual benefit of both a utility's customers and its shareholder (EUB Decision 2003-040, footnote 12 on page 8 of the Staff Research Paper). However, the methodology for evaluating and sharing of the mutual benefits should be detailed and subject to regulatory scrutiny. All of the efficiency gains attributable to the utility should accrue to ratepayers.

2. Does competition belong in the Electricity ARC as a code objective?

LPMA supports that statement from the Board in Section 3.1 of RP-1999-0058. In particular, the statement is:

"A role of the Board in enhancing the competitive energy service marketplace is to ensure that the utility does not use its dominant position in the storage, transmission, and distribution of gas to frustrate the development of a competitive market in other non-regulated energy services".

LPMA believes that this should be equally applicable to electricity distributors and transmitters. The Board Code should emphasize that any uncompetitive activities between a regulated utility and its affiliate which may be detrimental to the interests of the utility customers is not be acceptable.

In terms of the appropriate scope of the Board’s objective regarding competition and the three categories of markets provided in the Staff Research Paper at pages 12 and 13, LPMA believes that the first two (energy retailing market and energy services beyond energy retailing market) are both areas where competition and anti-competitive behaviour should be addressed in the Electricity ARC.

As for the third area (non-energy related goods and services markets), it is unclear why a utility would be dealing with an affiliate that is engaged in a business with little or no apparent connection with the core utility functions, other than to provide generic type services to the affiliate. The regulator should, of course, still be concerned with cross-subsidization issues such as confidential customer information, and the use of utility resources by an affiliate at less than market prices. It should also be noted that such affiliates may impact on the cost of capital available to the regulated utility, especially if access to capital is through a larger corporate group. However the competitive impact on this non-energy market that does not impact on utility ratepayers should not be an issue that is addressed in the Electricity ARC.

3. Should the current Electricity ARC definition of energy service provider be narrowed or eliminated entirely?

LPMA believes that the definition of energy service provider should not be narrowed. This would eliminate such items as energy management services, CDM services and other electricity related activities. This may provide the affiliate with a competitive advantage and hamper a strong market for these activities. For example, the delivery of CDM services, as per government policy, could be seriously hampered if utility affiliates are given preferential treatment in the delivery of programs. A robust competitive industry for the delivery of these services will provide significantly more results than if the industry is hamstrung with a number of small utility affiliates that duplicate costs and programs and deliver less.

If the Board is to have a definition that is too narrow or too broad, it is submitted that it should err on the side of being too broad. Utilities are always free to request specific exemptions for specific affiliates and specific services if the need arises.

<u>4. Should the current Electricity ARC treatment of "confidential information" be narrowed or otherwise changed?</u>

The current definition of confidential customer information appears to be adequate and no changes should be made. As the staff Research Paper indicates, the current definition is simple to understand and it provides maximum protection to utility customers.

The addition of a qualifier that the confidential information must not be otherwise available to the public should not be added. The key point missing in this qualifier is that there can be a significant difference in the cost to acquire this information. A second point that is missing is that often the customer information is time sensitive. In other words, part of its value is in how up-to-date the information is. It may be available publicly, but it may be out of date, rendering it useless. Utility data is likely to be more current that most public sources.

The second option of requiring that the information in question provide a competitive advantage before it is considered confidential for code purposes should also be rejected. This concept is too vague and would be difficult to police.

It is further submitted that whatever information (whether deemed to be non-confidential, or aggregated in one form or another) that is made available to an affiliate must be made available on equal terms and conditions to any party requesting it.

5. Should the Electricity ARC rules on the sharing of employees between utilities and their affiliate be made more flexible?

LPMA recommends that the Board adopt the Gas ARC description of employee sharing limits. It is more specific and should provide greater certainty to utilities and their affiliates as to what is allowed and what is not.

Further, LPMA agrees with the Staff recommendation that the Board should clarify the types of non-operating employees that can be shared and the types of operating employees that cannot be shared.

Again, if specific customer information is to be shared between the utility and the affiliate to facilitate utility-affiliate employee sharing, then this information should be available to any party who wants it under the same terms and conditions.

6. Do the Electricity ARC provisions regarding the percentage of independent utility directors remain appropriate?

More rigorous self-policing is a key element when reviewing the percentage of independent utility directors. While the simplest way to deal with this issue and provide ratepayers with adequate protection would be to require that the regulated utility ensure that at least one-half of its Board of Directors is independent from any affiliate, it could be argued that this could increase costs to the utilities of retaining them. However, this increased cost would be small compared to the overall regulated costs of large and medium sized distributors. The incremental cost would only be an issue for small utilities with an already small number of directors.

This problem could be solved with a separate provision in the ARC that stated that if a utility requests an exemption to this rule (i.e. at least one-half of the directors is independent from any affiliate), then any directors that act in a dual capacity for the utility and an affiliate should be required to abstain on any issue that involves the affiliate.

7. Should the current Electricity ARC rules for market or cost-based pricing of goods and services be changed?

The Gas ARC provisions should be extended to the electricity sector. The Gas ARC has more detailed transfer-pricing requirements that have been developed over the years for ratepayer projection. More importantly, it would restore consistency between the gas and electric sectors. This is an important consideration since ratepayers are often customers of both an electricity and natural gas distributor.

8. Should the Gas ARC outsourcing provisions be included in the Electricity ARC?

Yes, as indicated previously, there should be consistency between the gas and electric sectors.

Electricity distributors should be required to do a business case analysis to determine if the affiliate option is sound and does not add costs to be borne by ratepayers. In particular, ratepayers should be unharmed by the action of the distributor, at a minimum. Similar to the Gas ARC, outsourcing should be permitted where it can be demonstrated that there will be no harm to the utility or its ratepayers.

LPMA submits that where a competitive market for a service that is being outsourced exists, a market price should be determined through a fair and open competitive bidding process, as is required in Section 2.3.5 of the Gas ARC. This approach provides the best information to the Board and to ratepayers that the price being paid to an affiliate and terms of the contract are reasonable.

It is also submitted that there should be limit on the length of a contract with an affiliate. The Gas ARC has a limit of five years in order to require the periodic validation that the utility is paying a reasonable price relative to current business conditions. Another reason for the limit is the possibility of significant mergers and acquisitions in the electric sector. Long term contracts with an affiliate may act as a deterrent to possible mergers and acquisitions and result in higher rates paid by customers. Setting a limit on these contracts reduces the negative impact that these contracts could have on ratepayers in the longer term.

The market for competitive services in the electricity sector is evolving. Not long ago, most of the services were done in-house. Now much of the work has been contracted out to affiliates and third parties. In some cases the market does not exist to provide some of the services. However, that is likely to change in the future as more third party providers enter the market. Some affiliates will grow and prosper through expanding their market beyond their affiliate. Others may fail because they cannot successfully compete against third party providers and affiliates of other utilities. Without a maximum length to an affiliate contract, overall market development for these services could be slowed, resulting in higher costs to ratepayers in all utilities.

9. Should the cost-based pricing rules for shared corporate services used in the Gas ARC be extended to the Electricity ARC?

Yes, the current provisions in the Gas ARC related to cost-based pricing rules for shared corporate services should be extended to the Electricity ARC. Again, this would ensure consistency for ratepayers of both electric and gas distributors.

LPMA agrees with the Staff Research Paper that amending the Electricity ARD could promote both stakeholder and regulatory certainty.

LPMA believes that the Gas ARC definition of shared core corporate services should be used as it is specific. It the definition was more broad, it may allow utilities to avoid tendering externally for services that may be available on better terms.

LPMA favours the no-ratepayer harm basis of implementation since this would be simpler to administer and understand. This is contingent upon rate proceedings continuing to be the forum in which stakeholders consider the nature and treatment of any benefits to ratepayers.

<u>10. Should the asset transfer-pricing provisions of the Electricity ARC mirror the requirements of the Gas ARC rules?</u>

Yes, the asset transfer pricing provision in the Electricity ARC should mirror those of the Gas ARC. This ensures a consistent approach to both sectors and provides more appropriate protection to ratepayers.

As noted above, the Gas ARC has evolved and has the benefit of comments and suggestions from many stakeholders in addition to actual operating experience gained over a number of years.

LPMA also supports the explicit statement that supports the market valuation requirements apply to intellectual property. The expected changes and innovations related to the installation of smart meters, the data collected and the programming that will be developed to analyze this data for cost allocation, rate design, CDM and other purposes may have a significant impact on the value of intellectual property developed within the utility.

<u>11. Should the Electricity ARC rules or exemption process treat small distributors differently?</u>

Costs of compliance should not be seen as a sufficient reason not to apply the Electricity ARC rules or exemption process to small distributors. Ratepayers of small distributors deserve the same level of protection as ratepayers served by larger distributors. Again, this would be parallel to the Gas ARC where the Board has not adopted a general policy of exempting small natural gas distributors.

A distributor, small or otherwise, can obtain an exemption if it presents a compelling reason why it should be exempt from a particular requirement of the Electricity ARC. The Electricity ARC should explicitly address the right to request a code exemption.

LPMA does not support the adoption of threshold tests. These tests can easily be circumvented by dividing a transaction into several smaller discrete transactions that can avoid regulatory and ARC scrutiny. This needs to be avoided as it significantly reduces the effectiveness of the ARC and can adversely impact on ratepayers.

Stakeholders would benefit if more details on the criteria and the process for an exemption request were available. This would result in a better understanding of the costs associated with the request. It may also lead to a standard streamlined process that would reduce costs to utilities, and ultimately to their ratepayers.