



**ECMI**

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Ontario Energy Board  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, Ontario  
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ATT: Kirsten Walli, Secretary

July 18, 2007.

Dear Ms. Walli,

**Re: Staff Research Paper on the Affiliate Relationships Code for  
Electricity Distributors and Transmitters  
Board File No.: EB - 2007- 0662**

In accordance with the OEB's e-mail and web posting of June 15, 2007 ECMI submits its comments on the above noted matter.

Three paper copies are enclosed. Electronic copies in both Adobe Acrobat and Word have been sent by email to [boardsec@oeb.gov.on.ca](mailto:boardsec@oeb.gov.on.ca).

Requested contact details are as follows:-

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Respectfully submitted for the Board's consideration,

*Original signed by R. White*

Roger White  
President

## **ECMI comments on Staff Research Paper on the Affiliate Relationships Code for Electricity Distributors and Transmitters. EB - 2007- 0662**

The apparent scope suggested in the Board Staff Research Paper is broad. Board Staff in considering the Affiliate Relationships Code (ARC) should give maximum priority to the needs of customers. There is a real need to consider the purpose of the ARC when attempting to evaluate its implications and the appropriateness of the required actions under the Code. When examining the purpose statement in the Code the statement talks about:

1. enhancing the development of a competitive market, and
2. saving ratepayers harmless from the actions of electricity transmitters and distributors in affiliate dealings

(a), (b) and (c) which follow in the Purpose of this Code statement may in some way be in conflict with the fundamental goals identified in 1 and 2 above:

- ECMI would suggest that item (a) “minimize the potential for a utility to cross-subsidize competitive or non monopoly activities”, appears to be one directional but if protection of customers is truly a goal then the opportunity to subsidize the electricity distributor’s rate resulting from a relationship with an affiliate should not be precluded.
- The desire to protect the confidentiality of customer information set out in (b) is valid but this desire could readily be realised by requiring a confidentiality agreement.
- Precluding preferential access to regulated utility services as set out in (c) is a fundamental requirement of a regulated entity complying with a non-discrimination principle. However, customer information release at the customer’s request or the release of required utility information to customer’s contractors related to activities or proposed activities of the customer are the only 2 items which must be established in the Code to ensure non-discrimination of access to information.

ECMI would suggest that Point 1 in the general statement of purpose is limited by the statute to promoting a competitive electricity commodity market as opposed to a competitive universal market within Canada or the world relating to all activities by all parties. If universal competition were the mandate of the Board as opposed to commodity competition, then the statute would have provided regulatory control by the OEB over the activities of LDC affiliates which the statute does not provide. Point 2 in the general statement of purpose is clearly intended to be mono directional and ensure that electricity distributor rates are not higher than they would otherwise be in the absence of an affiliate relationship. To take this laudable goal to the extreme of saying that an affiliate relationship cannot be used to subsidise LDC’s electricity rates would not hold the customers harmless and in fact through higher and unstable rates would violate one of the OEB’s primary obligations.

The question can readily be put. Are distributor rates subsidising the activities of an affiliate or the activities of an affiliate subsidising distribution rates? ECMI is of the view that if it is the latter then the OEB should have no regulatory interest as it has no statutory mandate. This is particularly valid for small and medium sized distributors where economic alternate resources to perform either regulated activities or non-regulated activities of an affiliate may be extremely limited if they exist at all. If an LDC ends up with lower regulated rates because of an affiliate relationship, then surely there is no harm to customers given the purpose of the ARC.

The current interpretation of the ARC by the Chief Compliance Officer is not consistent with the promotion of economic efficiency. Meetings indicating a lack of concern or even interest in the rate implications of his interpretation of the ARC suggest that this lack of interest is inconsistent with the purpose of the ARC. The OEB should be cautious that pursuit of uniformity or consistency with the regulation of the gas industry should not be in conflict with the principles of the ARC and their application to the electricity sector as this would fail to serve customers well.

There is a common obligation of a municipal corporation with the OEB in terms of sharing a common trust relationship with customers (OEB) or the population of a community (Municipal Corporation). This common statutory obligation on both parties requires that the ARC be interpreted in potentially unique ways when a municipal corporation owns and operates an LDC which serves all or part of its community. Considerations of this special relationship should apply to the affiliates of a municipal corporation. Failure to acknowledge the special relationship with customers and statutory and community status of a municipal corporation will result in material hardship for smaller communities in general and northern communities in particular. If the OEB determines that the size of the pie chargeable in electricity rates is smaller because of LDC activities with an affiliate, then the ARC should not apply. Fair and reasonable rates to consumers within the community can be established by the OEB without establishing barbed wire fences or based on the new interpretation of the ARC razor wire fences between the LDC and its affiliates.

If an LDC is owned by a municipal corporation (or a non-contiguous LDC or an LDC serving adjacent municipalities such that in either case the LDC is owned jointly by the respective municipal corporations), then the normal fiduciary responsibilities of the Board of Directors of the LDC to maximise the benefit to shareholders includes the customers and population within the LDC's service area. The OEB is reminded that the municipal corporation holds assets including the shares in the LDC on behalf of the population of the municipality. There is no apparent conflict between the fiduciary obligations of the Board of Directors of the LDC, the trust obligations of the municipal corporation, or the regulatory responsibilities of the OEB. In the extreme, if the municipal corporation suffers a material loss in its tax base because of the closure of major industries and loss of jobs in the community, the LDC would similarly suffer and fair and reasonable rates might well increase. It follows that maximising the benefits to the municipal corporation and the LDC of shared resources can readily serve customers well. This relationship can clearly serve the interest of the OEB and its obligation to protect customers as well as the interests of the municipal corporation. It follows that if the OEB is going to mandate changes in affiliate relationships in such cases that the OEB's statutory duty implicitly extends to include demonstrating a no harm to customers principle in terms of the rates to customers which would flow from such a requirement or decision.

Clearly the application and interpretation of the ARC by the OEB as a responsible regulator must recognise the special relationship of a municipality and its LDC with its customers.

ECMI acknowledges that the OEB has the right to establish Codes to govern certain aspects of distributor activities. We remind the Board that it is the Board's duty to publish proposed codes or proposed changes to Codes and invite comment. Further, the statute obliges the Board to consider the comments before issuing a Code or Code amendment. Consideration can only be demonstrated if the comments are published and the Board responds to the comments with reasons. This response with reasons is implicit in the word "consider" in the statute. The term "consider" in the statute should not be interpreted to imply that consideration can occur in an *other than a public* process. Only with that response with reasons can the Board demonstrate a transparency not only in its process but the rationale for the decisions underpinning that decision.