



July 17th , 2007

Mr. Peter O'Dell
Assistant Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Re: **EB-2007-0662:**
Staff Research Paper on the Affiliate Relations Code for Electricity Distributors
and Transmitters.

Dear Mr. O'Dell:

The Building Owners and Managers Association of Greater Toronto (BOMA) is pleased to provide these comments regarding the Affiliate Relations Code (ARC).

Consistent with the stated desire of the Board for consumer groups to coordinate efforts where possible, we have also been in communication with the Federation of Rental Providers of Ontario (FRPO) on this initiative. We believe that BOMA and FRPO share certain fundamental positions regarding fairness in the competitive marketplace. FRPO has specific issues relating to their constituency that they wished to articulate and will be forwarding directly.

Overview:

BOMA strongly endorses the view that the ARC is essential in protecting the interests of both Ontario ratepayers and providers of competitive services in the Ontario energy marketplace.

We believe that much of the commentary to date involves LDCs attempting to justify their incursion into competitive activities on the basis of general economic efficiency. Such actions are indicative, to BOMA, of an abuse of monopoly privilege.

For reference, in addition to directly representing the interests of large commercial energy consumers, BOMA Toronto membership also includes a cross section of *service providers* to the commercial building industry. These include engineering consultants, electrical and mechanical contractors, equipment suppliers and energy service companies. These Allied members of BOMA should have the assurance of protection provided by the ARC – i.e. that LDCs cannot arbitrarily and unfairly impact on their businesses by cross-subsidization from their utility operations or more subtle forms of assistance to affiliates which are nevertheless anti-competitive.

We do not believe that abiding by, or enforcement of, the ARC need be an onerous process. Indeed, some LDCs and their Affiliates appear to have evolved to establishing a proper separation between regulated monopoly activities and provision of competitive services. We believe such clear demarcations should be fundamental to the operation of all LDCs and their affiliates.

In summary, BOMA maintains that the ARC as it currently exists is clear, effective, and sound. Attention should be applied to practical enforcement of, and compliance with, the existing ARC rather than contemplating any substantial revisions.

Issue 2.1 – Does utility efficiency belong in the Electricity ARC as a code objective.

No. The OEB Act has a stated objective of promoting overall *economic efficiency*. To extend this interpretation to *utility efficiency* and then apply it as an objective for the ARC is a leap of reasoning and would likely work against the ‘overall economic efficiency’ mandate. The current ARC has three clear objectives:

- (a) minimize the potential for a utility to cross-subsidize competitive or non-monopoly activities;
- (b) protect the confidentiality of consumer information collected by a transmitter or distributor in the course of provision of utility services; and
- (c) ensure there is no preferential access to regulated utility services.

Adherence to these existing objectives should be the primary consideration. As stated in our overview, we see the addition of ‘utility efficiency’ as an obfuscation of the clear requirements of the ARC, and a potential means for LDCs to justify their non-compliance.

Issue 2.2 – Does competition belong in the Electricity ARC as a code objective?

Yes. It is already there. We do not believe that it needs to be changed or that it is inconsistent with the revisions to the OEB act.

There seems to be confusion between *competition in the sale of electricity* and *competition in the provision of energy services*. The former is but a subset of the latter.

Just because the OEB act was changed to remove reference to competition in the sale of electricity, does not mean that competition in the broader field of energy services is no longer relevant. Indeed it goes to the very essence of why the ARC is in place.

Perhaps a more practical suggestion would be to revise section 1.1 of the Arc to read “ The principal objectives of the Code are to enhance to development of a competitive market *for energy services....*”

We strongly support the opinion stated in the analysis that the Board has a positive duty to protect consumers from the utility abusing its monopoly position. Regrettably we continue to see instances where LDCs appear oblivious to this abuse. We note, as a specific example, in the Dec 06 issue of Distributor Magazine, where the Chair of the Electricity Distributors Association states:

*“On another smart meter related matter, the EDA Board has recently adopted a formal policy position on smart meter sub-metering, based on the input and consensus provided through EDA Councils. **The position provides for EDA efforts to focus on distributors having exclusive authority to install smart meters in condominiums by 2010.** In the event that a different approach is taken by Government, the EDA will advocate for the regulation of sub-metering activities that protects consumers, ensures that bills are based on subdividing the bulk bill, and ensures consistency with previous Board decisions relating to the recovery of costs that are reasonable and without profit. **We’ve also directed Association staff to ensure, by means of our advocacy efforts, that ‘conditions of service’ remain an effective means for LDCs to protect their interests in their service territories.**”* (emphasis added).

BOMA has previously represented to the Board that LDC Conditions of Service require closer scrutiny to ensure compliance with relevant codes. From the example noted above, we infer that the EDA is tacitly endorsing anti-competitive behaviour in the name of protecting customers’ interests.

Issue 2.3 – Should the current ARC definition of energy service provider be narrowed or eliminated entirely?

No. As noted above in Issue 2.2, the purview of the ARC should be for all energy services. We support the analysis that change in the Ontario market with respect to electricity retailing has no practical extension to a revision of the ARC. We believe the current definition properly captures the breadth of existing and potential activities to which the ARC should apply.

Issue 2.4.1 – Should the current Electricity ARC treatment of ‘confidential information’ be narrowed or otherwise changed?

No. BOMA supports the staff view that the current definition is suitable.

Issue 2.4.2 – Should the Electricity ARC rules on the sharing of employees between utilities and their affiliates be made more flexible?

No. BOMA believes that improper sharing of employees is a persistent abuse of current ARC rules that leads to customer confusion and unfair advantage in the marketplace. In some instances LDC and affiliate employees routinely represent themselves as both employees of the LDC, the Affiliate and/or the holding company.

We believe that enforcement of this existing requirement of the ARC remains a priority. We support the OEB Staff suggestion that better definition of specific types of shared and non-shared employees may serve to provide clarification.

With respect to CDM, BOMA views this as an extension of regulated LDC activities. We do not see it as creating problems for compliance with the existing ARC or in any way limiting CDM activities by the LDC. In delivering their CDM programs, LDCs would be expected to use dedicated LDC staff or to outsource to competitive service providers. In those instances of outsourcing, it would be expected that LDC Affiliates would not enjoy any preferential treatment, as per the existing ARC.

Issues 2.5 through 2.7

BOMA does not wish to provide specific comments or recommendations at this time. We look forward to reviewing the considered views of other stakeholders on these particular issues.

Thank you for the opportunity to provide comment and participate in this important undertaking. We hope that our views have been informative.

Yours truly,

A handwritten signature in black ink, appearing to read 'Chuck Stradling', with a stylized flourish at the end.

Chuck Stradling
Executive Vice President
BOMA Toronto