



## **Attachment C (Clean Version)**

# **AFFILIATE RELATIONSHIPS CODE FOR ELECTRICITY DISTRIBUTORS AND TRANSMITTERS**

**ONTARIO ENERGY BOARD**  
**Revised [•], 2007**  
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## 1. GENERAL AND ADMINISTRATIVE PROVISIONS

### 1.1 Purpose of this Code

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 competitive or non-monopoly 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.

### 1.2 Definitions

In this Code:

“Act” means the *Ontario Energy Board Act, 1998*;

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

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

“agent” means a person acting on behalf of a utility and includes persons contracted to provide services to a utility;

“Board” means the Ontario Energy Board;

“Code” means this Affiliate Relationships Code for Electricity Distributors and Transmitters;

“confidential information” means information the utility has obtained relating to a specific consumer, retailer or generator in the process of providing current or prospective utility service;

“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;

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

“distributor” means a person who owns or operates a distribution system;

“energy service provider” means a person, other than a utility, 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, and appliance sales, service and rentals;

“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;

“information services” means computer systems, services, databases and persons knowledgeable about the utility’s information technology systems;

“licence” means a licence issued under Part V of the *Act*;

“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;

“rate” means a rate, charge or other consideration and includes a penalty for late payment;

“Rate Order” means an order of the Board that is in force at the relevant time which, among other things, regulates distribution and transmission rates to be charged by a utility;

“Services Agreement” means an agreement between a utility and its affiliate for the purpose of subsection 2.2 of this Code;

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

“strategic business information” means information, including confidential information, that a utility has obtained or developed in the course of providing, or otherwise has in its possession as a result or for the purpose of providing, current or prospective utility service and that (a) identifies or can reasonably be expected to identify or (b) provides or can reasonably be expected to provide a business opportunity or other business advantage to the person to whom the information is provided;

“transmission system” means a system for transmitting electricity , and includes any wires, structures, transformers, equipment or other things used for that purpose;

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

“transmitter” means a person who owns or operates a transmission system;

“utility” means an electricity transmitter or electricity distributor that is licensed under Part V of the *Act*;

“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

“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*.

### **1.3 Interpretation**

Unless otherwise defined in this Code, words and phrases that have not been defined shall have the meaning ascribed to them in the licences issued by the Board, the *Act* or the *Electricity Act, 1998* as the case may be. Headings are for convenience only and shall not affect the interpretation of this Code. Words importing the singular include the plural and vice versa. A reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document.

### **1.4 To Whom this Code Applies**

This Code applies to utilities licensed under Part V of the *Act*.

### **1.5 Hierarchy of Codes**

This Code shall prevail over any other code established by the Board where there is a conflict, subject to any specific conditions of a utility’s licence.

### **1.6 Amendments to this Code and Determinations by the Board**

- 1.6.1 Subject to section 1.6.2, the amendments to this Code made by the Board on *[insert date]* 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 place on June 15, 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.

## **2. STANDARDS OF CONDUCT**

### **2.1 Degree of Separation**

- 2.1.1 A utility shall ensure accounting and financial separation from all affiliates and shall maintain separate financial records and books of accounts.
- 2.1.2 A utility shall ensure that at least one-third of its Board of Directors is independent from any affiliate.

### **2.2 Sharing of Services and Resources**

- 2.2.1 Where a utility provides services or resources to an affiliate or receives services or resources 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. The Services Agreement shall include:
- (a) the type, quantity and quality of service;
  - (b) pricing mechanisms;
  - (c) cost allocation mechanisms;
  - (d) confidentiality arrangements;
  - (e) the apportionment of risks (including risks related to under or over provision of service); and
  - (f) a dispute resolution process for any disagreement arising over the terms or implementation of the Services Agreement.

- 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. Compliance with the access protocols and the Services Agreement shall be ensured as necessary, through a review which complies with the provisions of section 5970 of the CICA Handbook. The Board may provide direction regarding the terms of the section 5970 review. The results of any review shall be made available to the Board.
- 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.
- 2.2.4 In the event of an emergency situation a utility may share services and resources, without a Services Agreement, with an affiliate which is also a utility.
- 2.2.5 The transfer pricing rules set out in section 2.3 do not apply when a utility and an affiliate share services in an emergency situation; a reasonable fully-allocated cost-related price shall be determined afterwards by the parties.



## **2.3 Transfer Pricing**

### **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.
- 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 market price of 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 or resource 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 or resource.

### **2.3.5 Shared Corporate Services**

2.3.5.1 Despite sections 2.3.3.1 and 2.3.3.6, 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 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.

## **2.4 Financial Transactions with Affiliates**

- 2.4.1 A utility may provide loans, guarantee the indebtedness of, or invest in the securities of an affiliate, but shall not invest or provide guarantees or any other form of financial support if the amount of support or investment, on an aggregated basis over all transactions with all affiliates, would equal an amount greater than 25 percent of the utility's total equity.
- 2.4.2 A utility shall ensure that any loan, investment, or other financial support provided to an affiliate is provided on terms no more favourable than what that affiliate would be able to obtain on its own from the capital markets and in all cases at no more favourable terms than the utility could obtain directly for itself in capital markets.

## **2.5 Equal Access to Services**

- 2.5.1 A utility shall not endorse or support marketing activities of an affiliate which is an energy service provider. A utility may include an affiliate as part of a listing of alternative service providers, but the affiliate's name shall not in any way be highlighted.
- 2.5.2 A utility, including its employees and agents, shall not state or imply to

consumers a preference for any affiliate who is an energy service provider.

2.5.3 A utility shall take all reasonable steps to ensure that an affiliate does not use the utility's name, logo or other distinguishing characteristics in a manner which would mislead consumers as to the distinction between the utility and the affiliate.

2.5.4 A utility shall take reasonable steps to ensure that an affiliate does not imply in its marketing material favoured treatment or preferential access to the utility's system or utility services. If the utility becomes aware of inappropriate marketing activity by an affiliate, it shall:

- (a) immediately take reasonable steps to notify affected customers of the violation;
- (b) take necessary steps to ensure the affiliate is aware of the concern; and
- (c) inform the Board in writing of such activity and the remedial measures that were undertaken by the utility.

2.5.5 A utility shall apply all Rate Orders and rate schedules to an affiliate in the same manner as would be applied to similarly situated non-affiliated parties.

2.5.6 Requests by an affiliate or an affiliate's customers for access to a utility's transmission or distribution network or for utility services shall be processed and provided by the utility in the same manner as would be processed or provided for similarly situated non-affiliated parties.

## **2.6 Confidentiality of Confidential Information and Restriction on Provision of Strategic Business Information**

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

2.6.2 A utility shall not disclose confidential information to an affiliate without the consent in writing of the consumer, retailer or generator, as the case may be, except where confidential information is required to be disclosed:

- (a) for billing or market operation purposes;

- (b) for law enforcement purposes;
- (c) for the purpose of complying with a legal requirement; or
- (d) for the processing of past due accounts of the consumer 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 any individual consumer, retailer, or generator's information 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 A utility shall not provide strategic business information to an affiliate that is an energy service provider.

## **2.7 Compliance Measures**

2.7.1 A utility shall be responsible for ensuring compliance with this Code and shall:

- (a) perform periodic compliance reviews;
- (b) communicate the Code to its employees; and
- (c) monitor its employees' compliance with this Code.

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