

**ACCENTURE BUSINESS SERVICES FOR UTILITIES INC.
("ACCENTURE BUSINESS SERVICES", FORMERLY CUSTOMERWORKS INC.)
SUBMISSION REGARDING THE PROPOSED AMENDMENTS TO THE OEB AFFILIATE
RELATIONSHIPS CODE FOR GAS UTILITIES
RP2004-0140**

Accenture Business Services makes this submission in response to the Board's June 3, 2004 Notice of Proposal to amend the Affiliate Relationships Code for Gas Utilities ("ARC").

Relevance of the ARC to Accenture Business Services

Accenture Business Services is a wholly owned indirect subsidiary and part of Accenture group of companies, a global management, consulting and business process outsourcing organization. Accenture Business Services has entered into a long term outsourcing arrangement with CustomerWorks Limited Partnership ("CWLP") whereby Accenture Business Services provides subcontracted services to CWLP's clients, including Enbridge Gas Distribution Inc. ("EGDI"). Accenture Business Services provides full service customer care outsourcing services (customer contact, billing, meter reading services, credit and collections, and payment processing) to more than 6 million end-use customers of regulated utilities, municipalities and retail energy companies including EGDI. Neither Accenture Business Services nor any other Accenture entity is affiliated with or related to any regulated utility in Ontario.

Services Agreement

Prior to August 2002, CWLP provided customer care services ("Services") directly to EGDI pursuant to a client services agreement entered into on January 1, 2002 (the "Services Agreement"). On August 1, 2002, this Services Agreement was subcontracted to Accenture Business Services (then known as 3985806 Canada Inc.).

Accenture Business Services operates in a highly competitive environment. All aspects of its business, including contractual terms, conditions, deal and pricing structure, contain highly confidential and competitive information. Accenture Business Services makes this submission for the purpose of ensuring that its legitimate third party business interests are not prejudiced by reason of the proposed amendments to ARC.

Definition of “Affiliate”

Accenture Business Services notes that the term “Affiliate” is defined in the *Ontario Energy Board Act* (the “Act”). By that definition, Accenture Business Services is not an affiliate of any regulated utility in Ontario. Accenture Business Services is, however, concerned with the Board’s interpretive guidance found in the plain text box on page 23 of the Board’s Background Policy Paper. According to that interpretive guidance, the Board will pay close attention in rate hearings if a utility or its affiliate outsources to a third party which is not technically an affiliate of the utility but is still “economically related” to the same corporate group. There is no explanation of what is meant by the term “**economically related**”. The Background Paper also states “As part of its prudence review, the Board will “**pay close attention**” in rate hearings if the utility or affiliate outsources to a third party who is technically not an affiliate of the utility but is still economically related to the same corporate group.

Accenture Business Services requests that the Board clarify its meaning of the terms “economically related” and “pay close attention” to ensure that non affiliated third party entities having arms’ length commercial relationships with regulated entities are excluded from the definition of “affiliate”.

Length of Term of Contracts - Section 2.31

Under the proposal, the term of a contract between a utility and an affiliate can not exceed five years. Accenture Business Services is of the view that the proposed five-year ceiling may be too restrictive thereby inadvertently depriving ratepayers of unique benefits that may arise from long term contractual arrangements.

Accenture Business Services submits that Section 2.31 be amended to read, “The term of a contract between a utility and an affiliate shall not exceed five years, unless otherwise approved by the Board”. Accenture Business Services also submits the term of a contract is determined, as are all other provisions, by negotiation. The Board should be reluctant to dictate specific contractual terms so as not to fetter the negotiating power of regulated utilities.

Grandfathering of Contracts

In its decision in EBRO RP2002-0133, the Board expressed concern with the tendering and contract terms of the Services Agreement. The Board went on to suggest that EGDI take the Board's comments into consideration when reviewing its outsourced customer care arrangements and that the Board expected its concerns to be addressed in any new contract entered into by EGDI. In setting the expectation that these concerns needed to be addressed upon renegotiation, the Board, in effect, validated the existence and continuation of the current terms and conditions of the Services Agreement at least until the expiry of the initial term. In other words, the Board did not dictate that the terms of the existing contract needed to be amended, but rather that any new contract would need to address their concerns.

The proposed changes to the ARC, if passed, would have profound effects on the contractual arrangements of Accenture Business Services, commercial arrangements that were negotiated in good faith almost 2 years ago. Accenture Business Services has provided consistent and reliable customer care services to EGDI and its customers since August 1, 2002 and has honored all of its contractual commitments to both CWLP and EGDI. To change the contract at this point is tantamount to changing the rules of engagement half way into the term. The Board would be interfering with Accenture's third party contractual rights and obligations, if it were to alter such fundamental aspects of the Services Agreement through the enactment of the proposed changes to the ARC.

Accenture Business Services is concerned that the Board's stated intention may have the unintended effect of interfering with existing contractual rights. In that the Board validated the existing terms of the Services Agreement until renewal, that the specific renewal is predicated upon matching terms such as service levels and price, and in keeping with its decision in EBRO RP2002-0133, Accenture Business Services submits that the Board cannot now make amendments to the ARC that have the effect of imposing changes to the terms of the existing Services Agreement.

Accenture Business Services submits that the proposed ARC be amended to explicitly provide that it is not intended to interfere with existing contractual relationships and that such relationships will be grandfathered in accordance with their contractual terms until the expiry of their initial terms.

A “Right to Match” clause

In the plain text box of the Background Policy Paper at page 15, there is a discussion as to what utilities will be expected to do at the end of an affiliate outsourcing contract. The third bullet point of that text provides that an automatic right to renew an affiliate contract will be inconsistent with the proposed Code. At page 8, the Board states that whether a fair and open competitive bidding process was actually followed by a given utility is a question of fact that can be reviewed in a rate hearing. The Board will assume that a fair and open competitive process has not been followed in instances where an affiliate is allowed to match any offer provided by another bidder. Accenture Business Services submits that that the outcome of the process and not the process itself is of most importance. The Board always has the right to impose ratemaking consequences on utilities that do not follow a certain process, thus ensuring the appropriate result rather than adherence to a process.

The Services Agreement provides that prior to the end of the initial term, EGD may solicit third parties to provide one or more of the Services by issuing a Request for Quotation. This process is designed to achieve a certain result, namely the ascertainment of the then current market price for services. It is only after CWLP elects to match the quotation (in service levels, content, and price) that the option to renew the contract for an additional term is triggered.

Accenture Business Services submits that a “Right to Match” clause does not interfere with the objective of a competitive bid process within the definition of the proposed ARC as it contemplates the matching of proposed terms not the automatic renewal of existing terms of a contract.

Transfer Pricing Where a Market Exists - Section 2.3.5

Accenture Business Services agrees that, where a market exists, a fair and open competitive bidding process should be used to establish the market price before a utility enters into a contract. However, Accenture Business Services is concerned that there is no explicit recognition in either the proposed amendments to ARC or in the Background Policy Paper that the competitive bidding process will be kept confidential. As set out above, Accenture Business Services operates in a highly competitive environment. Competitive bids contain commercially sensitive and proprietary information, which, if disclosed, would cause financial harm to the bidder, among others.

To ensure that the competitive bidding process works as intended, bids received must be kept confidential. Accenture Business Services submits that proponents in any competitive bidding process need to know going into the bid process that the Board will hold the competitive bids and any supporting documents in the strictest confidence.

Accenture Business Services submits that the proposed Section 2.3.5 be revised to explicitly provide that the Board will hold in confidence any documents related to the competitive bidding process, the disclosure of which documents could cause irreparable financial harm.

Confidentiality of Information - Section 2.6

The proposal provides for a new disclosure requirement, which would be incorporated into affiliate contracts, the effect of which would be to require the affiliate to contractually comply with all requests by the Board for information. The affiliate would be required to provide the Board with information with respect to the transactions provided for under the contract and the cost to the affiliate of providing any service, resource or product under the contract.

As a general proposition, Accenture Business Services is of the view that if the Board is seeking greater levels of disclosure, it must be prepared to provide higher levels of confidentiality protection similar to that granted in the Ontario Courts. No unrelated third party services provider should be compelled to reveal its costs to the Board, the utility or the interveners.

Accenture Business Services would strongly object to the disclosure of such highly confidential and proprietary information.

In any event, Accenture Business Services submits that if a utility has complied with Sections 2.3.4 through 2.3.6 of the proposed ARC and has acquired Services at a market price, the Board's "need to know" has been satisfied. In other words, if the other requirements of Section 2.3 have been met, the cost to the affiliate of providing any service, resource or product under a contract is no longer necessary.

Accenture Business Services submits that there should not be any additional requirement for an affiliate to produce information in the proposed Section 2.6.1.1 and that such Section be deleted in its entirety.

All of which is respectfully submitted.

Accenture Business Services for Utilities Inc.

Per: _____