

Revised proposed amendments to the OEB Affiliate Relationships Code for Gas Utilities

(Revised September 3, 2004)

Purpose of this Code

- *The second sentence in section 1.1 is amended as follows (amendments italicized):*

The principal objectives of the Code are to enhance a competitive market while, *at a minimum, keeping ratepayers unharmed by the actions of gas distributors, transmitters and storage companies with respect to dealings with their affiliates.*

Definitions

- *Section 1.2 is amended by revoking the definition of “Director” and the definition of “fair market value”.*
- *Section 1.2 is further amended by adding the following definitions:*

“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

“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 service, and include but are not limited to overhead costs, administrative and general expenses, and taxes

“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

~~“service” includes a utility service~~

“shared core 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

“utility asset” means tangible or intangible property included in the utility’s rate base

Interpretations

- *Section 1.3 is amended by adding the following sentence at the end of the section:*

Nothing in this **rule Code** in any way limits the **jurisdiction authority** of the Board, in a proceeding under section 36 of the Act, to review the prudence of actions taken by a utility and determine what costs should be recovered by a utility through rates.

To Whom this Code Applies

- *The Code is amended by adding the following new section:*
 - 1.4.2 Despite section 1.4.1, section 2.3 ~~and section 2.6.1.4~~ of the Code **de does** not apply to a utility that is exempt from rate regulation by the Board.

Coming Into Force

- *The Code is amended by adding the following new section:*
 - 1.5.2 The amendments to the Code made by the Board on (date made by the Board to be inserted) come into effect on (insert date that is **three six** months after date made by Board). **However, for affiliate contracts or Services Agreements which were in place on June 3, 2004, the amendments will not apply until after the end of the initial term of any such contract or agreement.**

Sharing of Services and Resources

- *Section 2.2.1 is amended by adding the following (underlined):*
 - 2.2.1 Where a utility shares services or resources with an affiliate it shall do so in accordance with a Services Agreement, the **length and** terms of which may be reviewed by the Board to ensure compliance with this Code. The Services Agreement shall include **documentation of:**
 - (a) the type, quantity and quality of service;
 - (b) pricing mechanisms, **which shall be consistent with sections 2.2.5 and 2.3;**
 - (c) cost allocation mechanisms, **which shall be consistent with 2.3.11.3;**
 - (d) **information disclosure and confidentiality arrangements, which shall be consistent with section 2.3.1.2; ...**

- Section 2.2.5 is amended by adding the following sentence at the end of the section

The transfer pricing rules set out in section 2.3 do not apply when a utility and an affiliate share services in an unanticipated emergency situation; a reasonable cost-related price shall be determined afterwards by the parties.

Transfer Pricing

- Section 2.3 is revoked and replaced with the following:

2.3 Transfer Pricing and Cost Information Disclosure

Terms of Contracts with Affiliates

2.3.1 The term of a contract or Services Agreement between a utility and an affiliate shall not exceed five years, unless otherwise approved by the Board.

2.3.1.2 A utility shall not enter into or renew a contract or Services Agreement with an affiliate unless it contains provisions which require the affiliate to:

- (a) comply promptly with all requests either made or authorized by the Board for information with respect to:
 - (i) the transactions provided for under the contract or Services Agreement; and
 - (ii) the cost to the affiliate of providing any service, resource or product under the contract or Services Agreement; and
- (b) include equivalent provisions to those set out in this section in any contracts the affiliate enters into with another affiliate for the purpose of providing any service, resource or product used in the provision of a service, resource or product to the utility.

Utility's Internal Cost

2.3.2 ~~Despite sections 2.3.6 and 2.3.10, where a utility acquires from an affiliate a service, product, resource or use of asset which immediately prior to the contract being entered into was provided by the utility itself, the utility shall pay no more than the lesser of the amount required under section 2.3.6 or 2.3.10, whichever is applicable, and the utility's fully allocated cost to provide the service, product or resource or own the asset at the time the utility was providing or owning it.~~
If a utility intends to outsource to an affiliate a service, product, resource, or use of asset, the utility shall first undertake a business case analysis.

- 2.3.3 ~~For the purposes of section 2.3.2, the fully allocated cost may 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.~~ For purposes of sections 2.3.2, the business case analysis shall contain (a) description of relevant utility needs on a per-item 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 benefits to the utility's Ontario ratepayers from outsourcing, and (f) justification of why any separate items were bundled together when considered for outsourcing.

Where a Market Exists

- 2.3.4 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.
- 2.3.5 A fair and open competitive bidding process shall be used to establish the market price before a utility enters into or renews a contract with an affiliate.
- 2.3.6 Despite section 2.3.5, 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 contracts with a value of less than \$100,000 or 0.1% of the utility's revenue net of the cost of gas, whichever is greater.
- 2.3.7 Where the value of a proposed contract exceeds \$300,000 or 0.3% of the utility's revenue net of the cost of gas, 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.
- 2.3.8 The Board may, for the purposes of sections 2.3.6 and 2.3.7, consider more than one contract to be a single contract where the Board is of the view that more than one contract has been entered into for the primary purpose of setting the contract values at levels below the threshold level set out in section 2.3.6 or 2.3.7.
- 2.3.9 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.

Where No Market Exists

- 2.3.10 Where 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.
- 2.3.11 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.

Shared Core Corporate Services

- 2.3.11.2 Despite sections 2.3.4 and 2.3.9, for shared core corporate services, cost-based pricing (as defined under sections 2.3.10 and 2.3.11) may be applied between a utility and an affiliate.
- 2.3.11.3 Reasonable cost allocation (methodology to be documented under section 2.2.1(c)) shall be applied to all shared core corporate services.

Transfer of Assets

- 2.3.12 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.
- 2.3.13 Despite section 2.3.12, the utility may sell or transfer to an affiliate a depreciable utility asset with a net book value of less than \$10,000 at a price equal to that net book value.
- 2.3.14 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 revenue net of the cost of gas, whichever is greater, the utility shall obtain an independent assessment of its market price.
- 2.3.15 If a utility purchases or obtains the transfer of an asset from an affiliate, the price shall be no more than the market price.
- 2.3.16 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 revenue net of the cost of gas, whichever is greater, the utility shall obtain an independent assessment of its market price.

Equal access to services

- *Section 2.5.4 is amended by deleting the word “Director” in clause (c) and replacing it with “Board”.*

Confidentiality of Information

- ~~*Section 2.6 is amended by adding the following new section:*~~

~~2.6.1.1 — A utility shall not enter into or renew a contract with an affiliate unless it contains provisions which require the affiliate to:~~

~~(a) comply promptly with all requests by the Board for information with respect to:~~

~~(i) the transactions provided for under the contract; and~~

~~(ii) the cost to the affiliate of providing any service, resource or product under the contract; and~~

~~(b) include equivalent provisions to those set out in this section in any contracts the affiliate enters into with another affiliate for the purpose of providing any service, resource or product used in the provision of a service, resource or product to the utility.~~

[Moved to section 2.3.1.2]

Record Keeping and Reporting Requirements

- *Section 2.8.2 is amended by deleting the second clause (b) and replacing it with the following:*
 - (c) the utility’s specific costing and transfer pricing guidelines, bidding procedures and Services Agreement(s).