

TERASEN INC.

SUBMISSION REGARDING THE PROPOSED AMENDMENTS TO THE OEB AFFILIATE RELATIONSHIPS CODE FOR GAS UTILITIES RP2004-0140

Terasen Inc. ("Terasen") appreciates the opportunity to make this submission in response to the Ontario Energy Board's ("OEB's" or the "Board's") June 3, 2004 Notice of Proposal to amend the Affiliate Relationships Code for Gas Utilities ("ARC").

Terasen is a 100% shareholder-owned company in the businesses of energy distribution, energy transportation, and providing regulated and non-regulated utility and energy products and services. Terasen has a direct interest in this matter as it owns 30% of CustomerWorks Limited Partnership ("CWLP") which provides outsourced customer care services to utilities, municipalities and retail energy companies, including Enbridge Gas Distribution Inc. ("EGD") in Ontario. The remaining 70% of CWLP is owned by Enbridge Commercial Services ("ECS").

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

The outsourced customer care service industry is a highly competitive industry offering utilities an opportunity to reduce costs, shift risk and provide improved service levels for the benefit of their customers. Consistent with competitive markets, all aspects of this business, including contractual terms, conditions, and pricing structures, contain highly confidential and commercially sensitive information. In this market environment, it is important that the sanctity and confidentiality of contracts are preserved to ensure that the full benefit of the outsourcing opportunity can be realized.

Although neither Terasen nor ABS is affiliated with or related to any regulated utility in Ontario, Terasen is concerned that certain of the proposed amendments to the ARC may adversely affect its investment through CWLP in the outsourced customer care service provision in Ontario.

As an active participant in the outsourced utility service provision industry, Terasen is concerned that the proposed rules seek to apply regulatory rules to an active and well-functioning competitive market. Terasen does not believe that applying cost of service regulation to competitive firms will ultimately benefit customers as it will discourage utilities from seeking outsourcing alternatives as a means of reducing costs, off-loading risk and improving service levels. Terasen believes the OEB can ensure that customers' interests are protected through its rate regulation of the utility companies and its determination of the prudence of all costs incurred in providing service including those being provided through outsourcing arrangements.

Terasen sets out below the specific elements of the proposed amendments to the ARC that are of greatest concern to Terasen.

Definition of "Affiliate"

Terasen believes that it is important for the continued development of a competitive outsourcing market in Ontario for the ARC to confirm the definition of "Affiliate" as defined in the *Ontario Energy Board Act* (the "Act"). In this regard, Terasen notes that by that definition, CWLP is not an affiliate of any regulated utility in Ontario as it is neither a subsidiary of Enbridge Inc. nor is it controlled by either ECS or Terasen as the constating documents of CWLP stipulate that all major management decisions by CWLP require board consent by both partners, namely ECS and Terasen jointly.

Terasen is concerned about the over-reaching scope of the Board's interpretive guidance found in the plain text box on page 23 of the Board's Background Policy Paper that states that "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. (emphasis added)” The term “economically related” is undefined and could be applied so broadly that non-affiliated entities such as CWLP could be subject to the same regulatory rules as true affiliates. Terasen submits that the ARC interpretative guidance should clarify that the term “economically related” does not extend to non-affiliated third party entities having arms’ length commercial relationships with regulated entities, which are not otherwise affiliates within the meaning of the Ontario Energy Board Act.

Transfer Pricing – Section 2.3

Given the potentially broad interpretation currently provided for in the definition of affiliate, Terasen has concerns that proposed changes to Section 2.3 may adversely affect the current services agreement between CWLP and EGD and the longer term effectiveness of the utility services market in Ontario.

In particular, the limitation on the term of the contract in Section 2.3.1 to five years unnecessarily limits the utility’s ability to maximize the value to customers from entering into an outsourcing agreement. In many cases, services providers would be willing to offer significantly reduced prices in exchange for longer term contracts. In addition, in some cases longer term contracts may be necessary to support the provision of services that require significant capital investments. The proposed rules do not allow sufficient flexibility to accommodate these circumstances.

Similarly, the Board’s interpretive guidance in the plain text box in page 8 of the Background Policy Paper that it would assume that a fair and open competitive bidding process had not been followed if an affiliate had a “right to match” clause is unfair and inappropriate. These clauses are very common in competitive market negotiations and are typically offered in exchange for lower prices, guaranteed renewal price limits or other concessions. It is therefore inappropriate to conclude a priori that any contract that includes a right to match clause has not been negotiated through a fair and open bidding process.

The proposed changes to Section 2.3 of the ARC could have profound effects on the existing contractual arrangements of Terasen, through its commercial arrangements in its CWLP investment that were negotiated in good faith almost 2 years ago and prior to the current

proposed amendments to the ARC. The terms of this contract included a renewal term and a right to match clause. These terms were offset by commitments to guaranteed service levels, lower prices and the undertaking of certain capital risks. To change the contract at this point is equivalent to changing the rules of engagement half way into the contract term and would cause harm to Terasen and its shareholders. It would be patently unfair to Terasen if such a drastic and significant change to the Services Agreement were imposed at this stage of the contract. The Board would be interfering with CWLP's third party contractual rights and obligations, if it were to alter this fundamental aspect of the existing contract.

Confidentiality of Information - Section 2.6

This section of the ARC relates to the protection of confidential customer information held by utilities. As such, it is not clear that the proposed changes which seek to gather confidential information from affiliates relate to this section of the ARC. The current section seeks to maintain the protection of confidential consumer information whereas the proposed changes seek to undermine the confidentiality of contracts and cost structure of firms operating in competitive markets. The proposed rules have the effect of putting affiliated companies at a disadvantage relative to other service providers – effectively reducing the competitiveness of the outsource service provider marketplace. Terasen believes these proposed rules should be deleted in their entirety. If they are retained, for greater clarity, these changes should be moved to another section of the ARC to make clear that they are not intended to apply to Section 2.6.

Section 2.6.1 (a)(i)

Terasen does not believe that the proposed disclosure requirements under Section 2.6 (a) (i) are necessary since contracts, apart from confidential and commercially sensitive information contained therein, entered into by the utility are presumably discoverable through the ordinary course of utility regulation.

Section 2.6.1 (a)(ii)

With regard to Section 2.6.1 (a)(ii), Terasen does not believe that the cost to an affiliate for providing service is relevant for establishing whether the utility and its customers are better off providing that service in-house, outsourcing to third parties or outsourcing to the affiliate. If affiliates are required to provide confidential and commercially sensitive information, a provision must be made to allow that information to be held confidential by the OEB in order to protect the company's legitimate financial interests.

Section 2.6.1 (b)

This clause extends the application of the obligations, restrictions and limitations of the ARC to affiliates of affiliates. This further limits the ability for utilities to take advantage of outsourcing opportunities to service providers outside of Ontario and possibly even outside the country. The proposed rules are punitive towards companies that are affiliated to regulated utilities in Ontario and would have the effect of reducing the competitiveness and effectiveness of the utility outsource marketplace. Terasen believes that this proposal is unnecessary and should be deleted in its entirety.

Conclusion

While Terasen maintains that it is not an affiliate of any utility in Ontario, Terasen remains concerned that some of the proposed rules and an overly broad interpretation and application thereof may have the consequence of impairing its interest in CWLP. If the OEB were to determine that the ARC rules apply to CWLP, Terasen submits that the fair, equitable and commercially reasonable thing to do is to grandfather the terms of existing contracts including the Services Agreement between CWLP and EGD.

Terasen is also concerned that, as currently expressed, the prescriptive nature of the ARC and the interpretive guidance do not provide adequate latitude for interpretation and fail to strike an appropriate balance between regulatory oversight and commercial marketplace reality. The

ARC needs to be amended to recognize that contractual terms with affiliated and non-affiliated companies alike may appropriately contain terms including longer than five year terms, matching clauses and renewal rights which are in the best interests of the utility and its customers and the outsourced service provider. In light of this, a mechanism should be established to allow appropriate or reasonable variances from the ARC which are subject to OEB approval.

All of which is respectfully submitted.

Terasen Inc.



Per: _____

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