

**AFFILIATE RELATIONSHIPS CODE
FOR
GAS UTILITIES**

ONTARIO ENERGY BOARD

Last Revised on November 25, 2010
(Originally Issued on July 31, 1999)

Table of Contents

- 1. GENERAL AND ADMINISTRATIVE PROVISIONS..... 2
 - 1.1 Purpose of this Code 2
 - 1.2 Definitions 2
 - 1.3 Interpretations..... 5
 - 1.4 To Whom this Code Applies 5
 - 1.5 Coming into Force 5
 - 1.6 Amendments to this Code..... 5

- 2. STANDARDS OF CONDUCT..... 6
 - 2.1 Degree of Separation..... 6
 - 2.2 Sharing of Services and Resources..... 6
 - 2.3 Transfer Pricing and Cost Information Disclosure..... 8
 - 2.4 Financial Transactions with Affiliates 12
 - 2.5 Equal Access to Services 12
 - 2.6 Confidentiality of Information 13
 - 2.7 Compliance Measures 14
 - 2.8 Record Keeping and Reporting Requirements 14
 - 2.9 Complaints Process..... 15

1. GENERAL AND ADMINISTRATIVE PROVISIONS

1.1 Purpose of this Code

The purpose of the Affiliate Relationships Code is to set out the standards and conditions for the interaction between gas distributors, transmitters and storage companies and their respective affiliated companies. 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 dealing with their affiliates. The standards established in the Code are intended to:

- (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, distributor or storage company in the course of provision of utility services; and
- (c) ensure there is no preferential access to regulated utility services.

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 Corporation Act* (Ontario);

“Affiliate Contract” means any contract between a utility and its 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 Gas Utilities;

“confidential information” means information relating to a specific consumer, marketer or other customer of a utility service, which information the utility has obtained in the process of providing current or prospective utility services;

“cost of gas” includes the costs of upstream transportation;

“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;

“energy service provider” means a person, other than an exempt 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;

“exempt utility” means a *Utility* as defined in this code or an electricity distributor or electricity transmitter that is licensed under Part V of the Act;

“fully-allocated cost” means the sum of direct costs plus a proportional share of indirect costs;

“gas” means natural gas, substitute natural gas, synthetic gas, manufactured gas, propane-air gas or any mixture of any of them;

“gas distributor” means a person who delivers gas to consumers, and *distribute* and *distribution* have corresponding meanings;

“gas transmitter” means a person who carries gas by hydrocarbon transmission line, as defined in Part VI of the *Act*, and *transmit* and *transmission* have corresponding meanings;

“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;

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

“in writing” means communication through writing, facsimile, or any other means of communication considered legally binding in the Province of Ontario;

“marketing” means to provide a contract or an offer, and is characterized by door-to-door selling, telemarketing, direct mail selling activities, and any other means by which an energy marketer or a salesperson interacts directly with a consumer;

“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;

“physically separated” means having separate office space in a separate building or located separately through the use of appropriate security-controlled access;

“qualifying facility” means a generation facility or an energy storage facility that is referred to, and meets the applicable requirements set out in, paragraph (a), (b) or (c) of the Directive issued to the Board by the Minister of Energy and Infrastructure and approved by Order in Council 1540/2009, including by virtue of the application of paragraph (e) of that Directive;

“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, transmission and storage rates to be charged by a utility;

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

“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;

“storage company” means a person engaged in the business of storing gas;

“utility” means, for the purpose of this Code, a gas distributor, gas transmitter or storage company;

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

“utility services” means the services provided by a utility for which a regulated rate, charge or range rate has been approved by the Board.

1.3 Interpretations

Unless otherwise defined in this Code, words and phrases that have not been defined shall have the meaning ascribed to them in the *Act*. 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. Nothing in this Code in any way limits the 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.

1.4 To Whom this Code Applies

All utilities are obligated to comply with the Code in dealing with affiliates.

- 1.4.2 Despite section 1.4, section 2.3 of the Code does not apply to a utility that is exempt from the application of section 36 of the *Act*.

1.5 Coming into Force

This Code comes into force on July 31, 1999.

- 1.5.2 The amendments to the Code made by the Board on December 9, 2004 come into effect on June 9, 2005. However, for affiliate contracts 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.

1.6 Amendments to this Code

- 1.6.1 Except where expressly stated otherwise, any amendments to this Code shall come into force on the date on which the Board publishes the amendments by placing them on the Board's website after they have been made by the Board.
- 1.6.2 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.

1.6.3 The Board may grant an exemption to any provision of this Code. An exemption may be made in whole or in part, and may be subject to conditions or restrictions.

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 be physically separated from any affiliate who is an energy service provider.

2.1.2A Section 2.1.2 does not apply in the case of an affiliate that is an energy service provider and whose sole activity is the ownership and operation of one or more qualifying facilities.

2.1.3 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 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 section 2.2.5 and section 2.3;
- (c) cost allocation mechanisms, which shall be consistent with section 2.3.11.3;
- (d) information disclosure and confidentiality arrangements, which shall be consistent with section 2.3.1.2;
- (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 5900 of the Canadian Institute of Chartered Accountants ("CICA") Handbook. The Board may provide direction regarding the terms of the section 5900 review. The results of any review shall be made available to the Board.
- 2.2.3 A utility may share employees with an affiliate provided that the employees to be shared are not directly involved in collecting, or have access to, confidential information.
- 2.2.3A Despite section 2.2.3, a utility may share employees that are directly involved in collecting, or have access to, confidential information with an affiliate whose sole activity at the time at which any such employee is being shared is the ownership and operation of one or more qualifying facilities.
- 2.2.3B Despite section 2.2.3, a utility may share employees that are directly involved in collecting, or have access to, confidential information with an affiliate whose activities at the time at which any such employee is being shared include but are not limited to the ownership and operation of one or more qualifying facilities, provided that:
- (a) the employees to be shared are limited to employees whose sole or principal function is to construct, operate, maintain or repair the system by which the utility provides utility services; and
 - (b) the employees may only be shared in relation to activities associated with the ownership and operation of one or more qualifying facilities.
- 2.2.4 A utility shall not share with an affiliate that is an energy service provider any employee who controls the access to utility services, or directs the manner in which utility services are provided to customers, or who has direct contact with a customer of the utility service.
- 2.2.4A Despite section 2.2.4, a utility may share employees that control the access to utility services, that direct the manner in which utility services are provided to customers, or that have direct contact with a customer of the utility service with an affiliate that is an energy service provider and whose sole activity at the time

at which any such employee is being shared is the ownership and operation of one or more qualifying facilities.

2.2.5 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. 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 and Cost Information Disclosure

Terms of Contracts with Affiliates

2.3.1 The term of an Affiliate Contract between a utility and an affiliate shall not exceed five years, unless otherwise approved by the Board.

2.3.1A Despite section 2.3.1, the term of an Affiliate Contract between a utility and an affiliate that is exclusively for the provision of services, products, resources or use of asset related to a qualifying facility may extend to a maximum of 20 years. Where an Affiliate Contract between a utility and an affiliate is for the provision of services, products, resources or use of asset that relates to, among other things, a qualifying facility, only that portion of the Affiliate Contract that relates to a qualifying facility may have a term that extends to a maximum of 20 years.

2.3.1.2 A utility shall not enter into or renew an Affiliate Contract 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 services, resources or products provided 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 of its or the utility's 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 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.
- 2.3.2A Despite section 2.3.2, a utility shall not be required to undertake a business case analysis prior to entering into an Affiliate Contract for the receipt of a service, product, resource or use of asset that it currently provides to itself and that pertains exclusively to the ownership and operation of one or more qualifying facilities.
- 2.3.3 For purposes of section 2.3.2, 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.
- 2.3.3.2 If a utility wishes to continue to receive from any affiliate a service, product, resource, or use of asset, the business case analysis described under section 2.3.2 must be repeated at least once every five years.
- 2.3.3.3 Section 2.3.3.2 does not apply to a service, product, resource or use of asset that pertains exclusively to the ownership and operation of one or more qualifying facilities.

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 it has been entered into for the 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.

Qualifying Facilities

- 2.3.9.A For a service, product, resource or use of asset that pertains exclusively to the ownership and operation of one or more qualifying facilities, fully-allocated cost-based pricing (as calculated in accordance with section 2.3.10 or 2.3.11) may be applied between a utility and an affiliate in lieu of applying the transfer pricing provisions of section 2.3.4 or section 2.3.9.

Where No Market Exists

- 2.3.10 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.

2.3.11 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, fully-allocated 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 shall be applied to all shared corporate services. The methodology for this calculation shall be documented under section 2.2.1(c).

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.

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.
- 2.4.1A Despite section 2.4.1, a utility that has an affiliate that owns one or more qualifying facilities may invest in or provide guarantees or any other form of financial support to its affiliates in an amount that, on an aggregated basis over all transactions with all affiliates, would equal an amount up to but not exceeding 35% of the utility's total equity.
- 2.4.1B Despite sections 2.4.1 and 2.4.1A, a utility may invest in or provide guarantees or any other form of financial support in any amount to an affiliate whose sole activity, at the time the investment is made or financial support is provided, is the ownership and operation of one or more qualifying facilities, subject only to the limitation that in no event may the utility's investments or financial support be in an amount that, on an aggregated basis over all transactions with all affiliates, would equal an amount that exceeds 100% 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.
- 2.4.3 Despite section 2.4.2, any loan, investment or other financial support provided to an affiliate by a utility may be provided on terms no more favourable than what the utility could obtain directly for itself in the capital markets if the loan, investment or other financial support is for the purpose of financing the ownership of one or more qualifying facilities.

2.5 Equal Access to Services

- 2.5.1 A utility shall not preferentially endorse or support marketing activities of an affiliate that 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.
- 2.5.2A Sections 2.5.1 and 2.5.2 do not apply in respect of the activities of an affiliate that is an energy service provider that are related to the ownership and operation of qualifying facilities.
- 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. 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 and distribution network or for utility services shall be processed and provided in the same manner as would be processed or provided for similarly situated non-affiliated parties.
- 2.5.7 A utility shall not transfer or assign to an affiliate a customer for whom the utility is providing utility services (as defined in this Code), unless the customer gives permission to such transfer or assignment in writing.

2.6 Confidentiality of Information

- 2.6.1 A utility shall not release to an affiliate confidential information relating to a consumer, marketer or other utility service customer without appropriate consent.

2.6.2 A utility shall not disclose confidential information to an affiliate without the consent in writing of the consumer, marketer or other utility service customer, 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;
- (a) 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, marketer or other utility service customer=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.

2.7 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.

2.8 Record Keeping and Reporting Requirements

2.8.1 A utility shall maintain updated records in a form and manner as prescribed by the Board so as to be able to substantiate compliance with this Code.

2.8.2 In addition to any other reporting requirements contained in this Code a utility shall provide the following information, in a form and manner and at such times as may be requested by the Board:

- (a) a list of all affiliates with whom the utility transacts, including business addresses, a list of the officers and directors, and a description of the affiliate's business activity;

- (b) a corporate organization chart indicating relationships and ownership percentages; and
- (c) the utility's specific costing and transfer pricing guidelines, tendering procedures and Services Agreement(s).

2.8.3 Where the total cost of transactions with a particular affiliate exceeds on an annual basis \$100,000 the utility shall maintain, and make available upon request by the Board, separate records showing:

- (a) the name of the affiliate;
- (b) the product or service in question;
- (c) the form of price or cost determination; and
- (d) the start date and expected completion date of the transaction.

2.9 Complaint Process

2.9.1 The utility shall designate an employee (Designated Employee) for the purpose of dealing with complaints and this person shall be identified as such to the Board.

2.9.2 Complaints respecting the application of this Code shall be submitted to the utility. All complaints shall be made in writing.

2.9.3 The Designated Employee shall acknowledge all complaints in writing within five working days, unless the complainant states that written acknowledgement is not required.

2.9.4 The Designated Employee shall respond to the complaint within 21 days of its receipt. The response shall include a description of the complaint and the response of the utility to all issues of contention identified in the complaint.

2.9.5 A record of all complaints and responses of the utility shall be kept for a period of three years and shall be made available for inspection by the Board.

2.9.6 If a complaint has not been resolved the complainant may refer the complaint to the Board. Any referral to the Board must be made in writing and shall include the response of the utility to the complaint as made under section 2.9.4.