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November 10, 2016

Movement of United Professionals
c/o Quail, Worth & Allevato Barristers and Solicitors
405-510 West Hastings St.
Vancouver, BC
V6B 1L8

Attention: Ms. Leigha Worth

Dear Ms. Worth

Re: FortisBC Energy Inc. (FEI)

Project No. 3698873

All-Inclusive Code of Conduct and Transfer Pricing Policy Application (the Application)

Response to Canadian Office and Professional Employees Union, Local 378 (known as Movement of United Professionals or MoveUP) Information Request (IR) No. 1

On June 30, 2016, FEI filed the Application referenced above. In accordance with the British Columbia Utilities Commission Order G-157-16 setting out the Regulatory Timetable for the review of the Application, FEI respectfully submits the attached response to MoveUP IR No. 1.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

cc (email only): Commission Secretary
Registered Parties

FortisBC Energy Inc. (FEI or the Company) All-Inclusive Code of Conduct and Transfer Pricing Policy Application (the Application)	Submission Date: November 10, 2016
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1.0 TOPIC: Practice in other jurisdictions.

1.1 Please file the following documents:

- a. *Ontario Energy Board Affiliate Relationships Code for Electricity Distributors and Transmitters* posted at
<http://www.ontarioenergyboard.ca/oeb/ Documents/Regulatory/Affiliate Relationships Code ARC Electricity.pdf>
- b. *Ontario Energy Board Affiliate Relationships Code for Gas Utilities* posted at
<http://www.ontarioenergyboard.ca/oeb/ Documents/Regulatory/Affiliate%20Relationships%20Code%20for%20Gas%20Utilities%20ARC.pdf>
- c. *Alberta Energy Utilities Board Decision 2005-002 – FortisAlberta Inc. Code of Conduct January 17, 2005* posted at
http://www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2005/2005-002.pdf
- d. *FortisAlberta Inc. Inter-Affiliate Code of conduct Compliance Plan, August, 2009* posted at
<http://www.auc.ab.ca/rule-development/rule-0xx-inter-affiliate-code-of-conduct/Documents/Utility Code and Plans/Fortis Plan.pdf>
- e. *Alberta Energy Utilities Board Decision 2003-040 Appendix 5, ATCO Group Inter- Affiliate Code of Conduct, May 22, 2003* posted at
<http://www.atcopipelines.com/Regulatory/Documents/Code-of-Conduct.pdf>
- f. *Nova Scotia Utility and Review Board, M06268 – Nova Scotia Power Inc. – Affiliate Code of Conduct Paper Proceeding – P-167, decision letter dated August 19, 2015* posted at
https://nsuarb.novascotia.ca/sites/default/files/nspi_affiliate_code_of_conduct_2015.pdf

Response:

Please refer to Attachment 1.1 for the requested documents.

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1.2 Please determine whether these are the most current iterations of these various utilities' Codes of Conduct. If not, please also file the most recent approved versions that have superseded those listed above.

Response:

To the best of FEI's knowledge, the links to the documents provided by MoveUP in IR 1.1.1 appear to be the most current versions of the various utilities' inter-affiliate Codes of Conduct.

FEI does not believe it is necessary at this stage to be referring to other jurisdictions' COC/TPP. As directed by the Commission, FEI has modeled the proposed All-Inclusive COC/TPP on the approved COC for ARBNNMs which was intended to be consistent with the principles of the RMDM guidelines, the AES Inquiry Report and Commission decisions related to specific ARBNNMs. These documents reflect circumstances that are specific to B.C. whereas other jurisdictions' COC/TPP reflect circumstances specific to their operating environment.

For example, FortisAlberta's COC/TPP was developed for an environment in Alberta. FEI's understanding of FortisAlberta's COC/TPP is that it was developed in the early 2000s timeframe, using the Code established by another provincial utility (ATCO Electric) in response to the development of number of non-regulated activities including retail energy marketing in Alberta. This is in contrast to the environment today for FEI where much of its operations in B.C. are regulated including FAES / Thermal Energy Services activities. This situation of regulated affiliates operating in a non-natural monopoly situation is unique to B.C. As a result, the FortisAlberta Code of Conduct or any other jurisdiction's Code of Conduct cannot simply be adopted without careful consideration for the different circumstances and the context in which the Codes were developed.

The Commission Panel notes there are examples of more detailed Codes of Conduct such as the FortisAlberta Inc. Code of Conduct as approved by the Alberta Energy and Utilities Board in 2005. (Exhibit A2-15) **The Panel recommends that the FEU initiate a process to prepare an updated Code of Conduct and Transfer Pricing Policy in respect of the interaction between the regulated utilities and related non-regulated businesses. This should be done through a collaborative process involving the utilities, stakeholders (including Interveners in this proceeding) and Commission staff. The Commission recommends that participants in this process should consider the Principles and Guidelines outlined herein as well as the FortisAlberta Inc. Code of Conduct. The Panel recommends that this process be initiated as soon as is practicable. The updated Code of Conduct and Transfer Pricing Policy should be submitted to the Commission for approval.**

5 2.1 Please confirm that the FortisAlberta Inc. Code of Conduct referenced in the
6 BCUC's AES Inquiry Report is included in the documents requested in MoveUP
7 IR 1.1.

9 **Response:**

10 The reference to the FortisAlberta Inc. Code of Conduct was made by the Commission, not by
11 FEI. Nevertheless, FEI believes that the referenced Code of Conduct is the same one that
12 MoveUP has requested be filed in response to MoveUP IR 1.1.1, item c.

¹ http://www.bcuc.com/Documents/Decisions/2012/DOC_33023_G-201-12_FEI-AES-Inquiry-Report_WEB.pdf

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1 **3.0 Reference: Exhibit B-2, Section 3.2, page 12**

Mutual Shared Services with FortisBC Inc.

FEI and FBC share common resources including the Executive Management team and other departmental resources, providing benefits to both organizations. Executive Management time is allocated on the basis of the Massachusetts formula as approved by the Commission in Order G-138-14¹⁵. The costs of other departmental resources are allocated between the Gas and Electric businesses using a timesheet allocation approach as set out in FEI's 2012-2013 RRA.

In its 2014 to 2018 Multi-Year PBR Application, FEI provided the following discussion which remains applicable today:¹⁶

"Since 2010, the FEU and FortisBC Inc. (FBC) have been sharing common resources starting with the sharing of the Executive Management team. More recently, the sharing of resources between FEI and FBC has continued as the organizations streamline operations and processes.

In this Application, sharing of resources between FEI and FBC, except for the Executive Management team, have continued with the approved cross charge process such that the cross charge includes a fully loaded wage including benefits and time away, with no overhead or facilities fees assigned. Executive Management time is being allocated on the basis of the Massachusetts Formula. As mentioned earlier in Section A3, given the evolving nature of integration efforts between the gas and electric businesses, the traditional timesheet allocation approach continues to be the appropriate approach to allocate the majority of shared costs between the two organizations."

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4 3.1 Please confirm that currently, and as of the date of this filing, not all costs of
5 "other departmental resources" are charged between the FEI and FBC utilities
6 using a timesheet allocation process. More specifically, please confirm that
7 FEI is charging FBC for use of its CSR staff on a per transaction/call basis.

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Response:

10 Confirmed; as stated, the **majority** of shared costs are allocated using the traditional timesheet
11 allocation approach. In the case of FEI CSRs handling electric calls, FEI is charging FBC on a
12 transactional basis rather than an hourly basis. This is because FEI employees are completing
13 FEI work between FBC calls making it more accurate to track costs based on a timesheet basis.
14 FEI believes that using a cost per interaction is the most accurate representation of costs and
15 represents a fair allocation between the utilities.

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3.2 Please confirm that at the time the utilities formulated and instituted the initial agreement in 2010, FEI and FBC were not sharing Customer Service resources and employees.

Response:

Confirmed. In 2010, FEI was outsourcing its Customer Service activities so Customer Service employees were not shared. The current approach to cost allocation between FEI and FBC was reviewed by the Commission in FEI's 2012-2013 Revenue Requirement Application and in FEI's 2014 to 2018 Multi-Year PBR Application. The Customer Service resource sharing has been specifically discussed in FEI's Annual Reviews for each of 2016 and 2017.

3.2.1 Please confirm that use of a per transaction cross-utility charge was not contemplated when the utilities formulated and instituted the initial agreement in 2010.

Response:

Confirmed; however the wording of the Mutual Shared Services agreement is broad enough to encompass a transaction based charge, since the transactions based charge includes the annual salary and benefits as stated in the agreement. The transaction based charge includes the total contact centre costs, which encompasses a broader scope than the fully loaded labour approach that is the basis for a timesheet based approach.

3.3 Please provide a table showing the cross-utility charges from 2010 up to and including the most current YTD figures available and a projection for this fiscal year.

Response:

Please refer to the response to BCUC IR 1.6.1.

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3.4 Please confirm that the “fully loaded” costs charged between the utilities does not include an allocation of the rate base in relation to the Customer Service Centres as between FEI and FBC.

Response:

Confirmed. FEI provides below its response to MoveUP IR 1.2.2.11 in its Annual Review for 2017 Rates proceeding:

There is no allocation of rate base associated with the Customer Service Centres as between FEI and FBC. FEI's practice with respect to allocating costs between entities is not to allocate the rate base itself but, where applicable under the relevant agreements and as approved by the Commission, to include a facilities fee as a component of its cross charges to recover the costs of the associated facilities. The Shared Services Agreement between FEI and FBC was filed with and reviewed by the Commission as part of FEI's 2012-2013 Revenue Requirements and Rates Application. As discussed by FEI in that application and by FBC in its 2012-2013 Revenue Requirement Application, and also in FEI's and FBC's PBR applications, the Shared Services Agreement between FEI and FBC does not include an overhead charge or a facilities fee. Commission Order G-110-12, related to FBC's 2012-2013 Revenue Requirements Application, approved this treatment as follows: “Cross charges between FortisBC and its affiliates regulated by the Commission are approved to be based on fully loaded costs, not including overhead.”

Please refer also to the response to BCUC IR 1.2.2 for discussion of the Commission's decision regarding cross charges between FEI and FBC.

3.5 Please confirm that the “fully loaded” costs charged between the utilities do not include an overhead charge or facilities fee associated with the Customer Service Centres as between FEI and FBC.

Response:

Confirmed. Please refer to the response to MoveUP IR 1.3.4.

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1 3.6 Please confirm that FEI has recently announced to its CSR's that its program
2 where FEI CSR's take FBC calls is expanding this program significantly, boosting
3 the number of FEI CSR's doing FBC work from eighteen to thirty.
4

5 **Response:**

6 Not confirmed. FEI is unaware of any such announcement to employees.

7 There are currently 17 FEI CSRs trained to take electric calls, which has recently been reduced
8 from 18 due to attrition. However, trained employees can change roles or leave the Company
9 throughout the year, requiring training to be scheduled several times a year to maintain the
10 required number of employees that are trained and available.

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1 **4.0 Reference: Exhibit A-5, BCUC IR 2.4**

2 **2.4 When will the Shared Services model approach for cross charging be completed and filed with**
3 **the Commission?**

4 4.1 Please indicate whether FEI intends that this Shared Services model approach
5 for cross charging filing will be informational purposes only or will be subject to
6 BCUC and intervener scrutiny through a public regulatory process.

7 **Response:**

8 Stakeholders will have an opportunity to review and comment on a Shared Services Approach
9 filing in an upcoming Annual Review of Revenue Requirement proceeding as discussed in
10 response to BCUC IR 1.2.4.

11

Attachment 1.1



AFFILIATE RELATIONSHIPS CODE FOR ELECTRICITY DISTRIBUTORS AND TRANSMITTERS

ONTARIO ENERGY BOARD

Revised March 15, 2010

(Originally issued on April 1, 1999)

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 affiliate 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;

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

“confidential information” means information the utility has obtained relating to a specific smart sub-metering provider, wholesaler, 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 or a shareholder of a utility that is a municipal corporation or the provincial government, 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; conservation or demand management programs; street lighting services; sentinel lighting services; metering (including smart sub-metering that is the subject of the Smart Sub-Metering Code and wholesale metering); billing other than solely for the delivery and supply of electricity or natural gas or for sewer or water services; and appliance (including water heater) 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*;

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“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;

“qualifying facility” means a generation facility or an energy storage facility that meets the requirements set out in subsection 71(3) of the 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” means business functions that provide shared strategic management and policy support to the corporate group of which the utility is a member, relating to legal, regulatory, procurement services, building or real estate support services, information management services, information technology services, corporate administration, finance, tax, treasury, pensions, risk management, audit services, corporate planning, human resources, health and safety, communications, investor relations, trustee, or public affairs;

“smart sub-metering provider” has the meaning given to it in the Smart Sub-metering Code;

“system planning information” means information pertaining to (i) the planning of a distribution system, including distribution system development or reinforcement plans, equipment acquisitions and work management plans, or (ii) the planning of systems involved in work management or of systems involved in the provision of customer service, including billing systems and call centre operations;

“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;

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“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.

Despite the above, a utility shall provide the following services to an affiliate in accordance with all applicable regulatory requirements set by the Board, including as to the terms of any contract:

- (a) all utility services; and

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- (b) any other service that is regulated by the Board, irrespective of whether a specific rate or charge has been established for that service.

1.6 Amendments to this Code and Determinations by the Board

- 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 web site after they have been made by the Board.
- 1.6.2 The following amendments to this Code made by the Board on May 14, 2008 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.
- 1.6.3 The amendments to this Code made by the Board on May 14, 2008 do not apply to an Affiliate Contract that was in effect on September 19, 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.

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2.2 Providing or Receiving Services, Resources, Products or Use of Asset

2.2.1 Where a utility provides a service, resource, product or use of asset to an affiliate or receives a service, resource, product or use of asset 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. A utility shall, if required to do so by the Board, conduct a review of the adequacy, implementation or operating effectiveness of the access protocols and associated contractual provisions which complies with the provisions of section 5970 of the CICA Handbook. A utility shall also conduct such a review when the utility considers that there may have been a breach of the access protocols or associated contractual provisions and that such review is required to identify any corrective action that may be required to address the matter. The utility shall comply with such directions as may be given by the Board in relation to the terms of the section 5970 review. The results of any such 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.

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2.2.3A Despite section 2.2.3, a utility that is a distributor may share employees that are directly involved in collecting, or have access to, confidential information with an affiliate that is an energy service provider 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 that is a distributor may share employees that are directly involved in collecting, or have access to, confidential information with an affiliate that is an energy service provider and 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 distributor's distribution system; 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 In the event of an emergency situation a utility may, without a Services Agreement, provide a service, resource, product or use of asset to, or receive a service, resource, product or use of asset from, 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 provides a service, resource, product or use of asset to, or receives a service, resources, product or use of asset from, an affiliate 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.

2.3.1.2 Despite section 2.3.1.1, an Affiliate Contract between a utility that is a distributor and an affiliate that is exclusively for the provision of services,

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products, resources or use of asset related to a qualifying facility, the term of the Affiliate Contract may extend to a maximum of 20 years. Where an Affiliate Contract between a utility that is a distributor and an affiliate is for the provision of services, products, resources or use of asset related 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.

2.3.2 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.

2.3.2.3 Despite section 2.3.2.1, a utility that is a distributor 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.

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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 under which the utility is acquiring a service, product, resource or use of asset from an affiliate.
- 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 greater of (i) the market price of the service, product, resource or use of asset and (ii) the utility's fully-allocated cost to provide service, product, resource or use of asset, when selling that service, product, resource or use of asset to an affiliate.

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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, resource, product or use of asset 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, resource, product or use of asset.

2.3.4A *Qualifying Facilities*

- 2.3.4A.1 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 sections 2.3.4.1 and 2.3.4.2) may be applied between a utility that is a distributor and an affiliate in lieu of applying the transfer pricing provisions of section 2.3.3.1 or section 2.3.3.6, provided that the distributor complies with section 2.3.4.3.

2.3.5 Shared Corporate Services

- 2.3.5.1 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 in lieu of applying the transfer pricing provisions of section 2.3.3.1 or section 2.3.3.6, provided that the utility complies with section 2.3.4.3.

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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 and 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.

2.3.7 Transfer Price Established by Law or Code

- 2.3.7.1 Where a statute, a regulation, or a code established by the Board, prescribes the amount to be charged by or to a utility in relation to the provision or receipt of a service, product, resource or use of asset, that Act, regulation or Code shall prevail over the requirements of sections 2.3.3 to 2.3.5 to the extent of any inconsistency.

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.

Ontario Energy Board**Affiliate Relationships Code**

2.4.1A Despite section 2.4.1, a utility that is a distributor and that has an affiliate that owns one or more qualifying facilities may invest 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 distributor's total equity.

2.4.1B Despite sections 2.4.1 and 2.4.1A, a utility that is a distributor may invest 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 distributor'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 distributor'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, in the case of a utility that is a distributor any loan, investment or other financial support provided to an affiliate may be provided on terms no more favourable than what the distributor 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 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.

Ontario Energy Board**Affiliate Relationships Code**

- 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 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 System Planning Information**
- 2.6.1 A utility shall not release to an affiliate confidential information relating to a smart sub-metering provider, wholesaler, consumer, retailer or generator without the consent of that smart sub-metering provider, wholesaler, consumer, retailer or generator.
- 2.6.2 A utility shall not disclose confidential information to an affiliate without the consent in writing of the smart sub-metering provider, wholesaler, consumer,

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retailer or generator, as the case may be, except to the extent permitted by the utility's licence or where confidential information is required to be disclosed:

- (a) for billing, settlement or market operation purposes;
- (b) for law enforcement purposes;
- (c) for the purpose of complying with any legislative or regulatory requirement; or
- (d) for the processing of past due accounts of the smart sub-metering provider, wholesaler, consumer, retailer or generator, as the case may be, 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 information pertaining to any individual smart sub-metering provider, wholesaler, consumer, retailer, or generator 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 Subject to section 2.6.5, a utility shall not provide system planning information to an affiliate that is an energy service provider.

2.6.5 A utility may provide system planning information to an affiliate that is an energy service provider:

- (a) if the system planning information is made available to non-affiliated third parties at the same time, or has previously been made available to non-affiliated third parties, on a non-confidential basis in substantially the same form and on the same terms and conditions as it is made available to the affiliate;
- (b) if the system planning information is, at the time of provision to the affiliate, publicly available in substantially the same form as it is made available to the affiliate; or
- (c) for the purposes of complying with any legislative or regulatory requirement.

2.7 Compliance Measures

Ontario Energy Board**Affiliate Relationships Code**

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.

End of Document

AFFILIATE RELATIONSHIPS CODE FOR GAS UTILITIES

ONTARIO ENERGY BOARD

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

Ontario Energy Board**Affiliate Relationships Code****Table of Contents**

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Ontario Energy Board**Affiliate Relationships Code****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;

Ontario Energy Board**Affiliate Relationships Code**

“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 Autility@ 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 Adistribute@ and Adistribution@ have corresponding meanings;

“gas transmitter” means a person who carries gas by hydrocarbon transmission line, as defined in Part VI of the *Act*, and Atransmit@ and Atransmission@ 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;

Ontario Energy Board**Affiliate Relationships Code**

“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.

Ontario Energy Board**Affiliate Relationships Code****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.

Ontario Energy Board**Affiliate Relationships Code**

- 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.

Ontario Energy Board**Affiliate Relationships Code**

- 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

Ontario Energy Board**Affiliate Relationships Code**

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.

Ontario Energy Board**Affiliate Relationships Code****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.

Ontario Energy Board**Affiliate Relationships Code**

- 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.

Ontario Energy Board**Affiliate Relationships Code**

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.

Ontario Energy Board**Affiliate Relationships Code****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.

Ontario Energy Board**Affiliate Relationships Code**

- 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.

Ontario Energy Board**Affiliate Relationships Code**

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;

Ontario Energy Board**Affiliate Relationships Code**

- (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.



FortisAlberta Inc.

Code of Conduct

January 17, 2005

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2005-002: FortisAlberta Inc.

Code of Conduct

Application No. 1351023

Published by

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ALBERTA ENERGY AND UTILITIES BOARD**Calgary Alberta**

**FORTISALBERTA INC.
CODE OF CONDUCT****Decision 2005-002
Application No. 1351023**

1 INTRODUCTION

On November 21, 2003, Aquila Networks Canada (Alberta) Ltd. (ANCA) filed an application with the Alberta Energy & Utilities Board (the Board) seeking approval for its inter-affiliate code of conduct (the Aquila Code). Subsequent to the filing of this application ANCA entered into arrangements to sell its assets to FortisAlberta Inc. (FortisAlberta). The FortisAlberta purchase was approved by the Board in Decision 2004-035. On June 21, 2004, FortisAlberta filed a revised application (the Application) with the Board.

On July 7, 2004, the Board issued a Notice of Application & Objections, which stated that should no bona fide objections be received by July 23, 2004, the Board would proceed to process the Application without further notice. Following receipt of comments from interested parties, the Board issued a Notice of Process on September 16, 2004. The Notice of Process established, among other things, October 19, 2004 as the date for receipt of Written Reply. The Board therefore considers the close of record for this Application to be October 19, 2004.

2 DETAILS OF THE APPLICATION

FortisAlberta stated that the only changes from the Aquila Code were the change in name from Aquila to FortisAlberta and a change to clause 2.4, the Coming Into Force section. With respect to the Coming Into Force date, Fortis indicated that as the sale of ANCA's distribution business to FortisAlberta closed on May 31, 2004, it would take some time to assess and implement the separation of FortisAlberta from its affiliated company, FortisBC Inc. (FortisBC). Consequently, FortisAlberta recommended that full force of the FortisAlberta Code of Conduct (the Fortis Code) come into effect on January 1, 2005. This would enable FortisAlberta to properly prepare for and start the separation process.

In addition to the changes noted above, FortisAlberta reiterated its request that FortisBC be defined as a Utility Affiliate for the purposes of the Fortis Code.

3 VIEWS OF THE PARTIES**Views of the Interveners****Alberta Federation of REA's Ltd., and Alberta Association of Municipal Districts & Counties (REA/AAMDC)**

REA/AAMDC submitted argument on October 12, 2004, in which it objected to the proposed Coming Into Force date proposed by FortisAlberta and to the request by FortisAlberta for the Board to deem FortisBC as a "Utility Affiliate" as defined in the Fortis Code.

Coming Into Force

REA/AAMDC stated the effective date for the Fortis Code had been deferred solely due to the commercial transaction between Aquila and FortisAlberta and as such, customers should not be put at a disadvantage because of the sale transaction.

Rather, REA/AAMDC submitted that an effective date of May 31, 2004 should be set for the Fortis Code and affiliate transactions between Fortis affiliates should be reported in compliance with the Board's approved Fortis Code as of that date. In support of their submission, REA/AAMDC argued that FortisAlberta advised that the affiliate transactions in place for 2004 were priced in compliance with their proposed Fortis Code and therefore, the Board should consider requesting a full year's reporting of affiliate transactions between FortisAlberta and FortisBC (should the Board approve the cost recovery basis for the pricing of the services provided).¹

Moreover, REA/AAMDC noted that FortisAlberta indicated that affiliate transaction forecasts will be included in the upcoming General Rate Application for 2005.² As such, REA/AAMDC maintained that without ever having the actual affiliate transactions reported in compliance with the Fortis Code, there would be no benchmarks to relate to the 2005 forecast transactions.

In further support of its submission, REA/AAMDC noted Decision 2004-054—ATCO Electric Code of Conduct Exemptions, wherein the Board noted its concern with ensuring proper documentation for the allocation of affiliate costs:

The Board is concerned with the relationships between “Utilities” and “Affiliates” as defined by the Code, including relationships between distinct business units operating within one regulated Utility, as is the case in this instance. The Board's concern in requiring suitable agreements between such utilities and affiliates is to ensure that there is appropriate documentation to support the allocation of costs. It is not persuaded that a general tariff application is the best forum in which to satisfy its concerns.³

REA/AAMDC submitted that FortisAlberta should be required to file a Compliance Report for 2004, (including at least the period June 1 to December 31), within 30 days of the calendar year end.

Designation of FortisBC

REA/AAMDC also objected to FortisAlberta's proposal to treat FortisBC as a utility affiliate. REA/AAMDC noted that the Fortis Code defined Utility affiliates as those entities regulated within the Province of Alberta by the AEUB. As FortisBC is not a regulated utility in Alberta and its terms and conditions of service are not regulated by the AEUB, it should not be considered a “Utility” affiliate. In support of its position REA/AAMDC noted that the Board ruled in Decision 2004-054 that utilities that do not fall within the Code's definition of a Utility are Non-Utility Affiliates.

¹ FortisAlberta Letter to the Board dated June 21, 2004

² REA/AAMDC.Fortis-1

³ Decision 2004-054, pages 8-9

The Board concurs with REA/AAMDC submission that the Northern Utilities do not fall under the Code definition of a “Utility” and agrees that they should be categorized as “Non-Utility Affiliates” for the purposes of the Code.⁴

REA/AAMDC submitted that FortisBC should therefore be included within the definition of Non-Utility Affiliate for the purpose of the FortisAlberta Code of Conduct.

Assuming that the Board agrees with REA/AAMDC’s submission that FortisBC be defined as a Non-Utility Affiliate for the purposes of the Fortis Code, REA/AAMDC objected to FortisAlberta’s proposal regarding the categorization of services provided by FortisAlberta to FortisBC. REA/AAMDC noted FortisAlberta had requested that the services provided to FortisBC be on a Cost Recovery Basis, as would be permitted between Utilities and their Affiliates as defined by the Fortis Code.

REA/AAMDC noted in Decision 2004-054 the Board approved ATCO Electric’s request to provide services to its northern affiliates on a Cost Recovery Basis despite the fact that these northern affiliates were not “Utilities” within the definition of the ATCO Code. The Board permitted recovery of costs on a Cost Recovery Basis in that instance due to the relatively small size of these northern utilities, the difficulty in determining Fair Market Value (FMV) given their size and location, the regulatory oversight of the northern jurisdiction and the fact that certain economies of scale would reduce costs otherwise borne by Alberta customers.⁵

REA/AAMDC submitted that the affiliate transactions between FortisAlberta and FortisBC, unlike ATCO Electric and its northern affiliates, are material in nature, and that a FMV for these type of services would not be difficult to obtain. Therefore, the affiliate transactions provided by FortisAlberta to FortisBC should be priced at FMV. This would ensure that regulated customers in Alberta are not cross-subsidizing the services provided to affiliates outside the jurisdiction of the AEUB.

Views of the Applicant

FortisAlberta submitted reply comments on October 19, 2004.

Coming Into Force

FortisAlberta argued that REA/AAMDC was seeking retrospective application of the Fortis Code which FortisAlberta submitted was inappropriate. In support of its requested “into force” date, FortisAlberta submitted that affiliate transactions that had been implemented under Aquila ownership were fully reviewed in the last DTA. Further, a new DTA was being prepared for filing late in 2004 which would address the 2005 test year and, as noted in REA/AAMDC.Fortis-1, FortisAlberta anticipated fewer and less material affiliate transactions on a go forward basis as compared to the previous owner.

FortisAlberta further submitted that the retrospective effective date requested by REA/AAMDC would require contractual arrangements to be put in place for transactions that had previously been vetted by Aquila. Moreover, many of these had already been phased out in 2004.

⁴ Decision 2004-054, page 11

⁵ Decision 2004-054, page 11

FortisAlberta maintained the course of action requested by REA/AAMDC would give rise to the need to create contracts for affiliate transactions that in some cases had either already ceased or would cease before 2004 year end. FortisAlberta contended that such a use of time and resources was not appropriate, particularly given that the earlier Aquila approach was reviewed by the Board in a DTA, and that the forward looking FortisAlberta approach will be reviewed in the next DTA.

FortisAlberta also noted that REA/AAMDC's approach was also in contrast to other Board decisions including Decision 2004-068 for AltaLink and Decision 2004-010 for EPCOR Utilities Inc.

Designation of FortisBC

FortisAlberta submitted that the ATCO Code template recognized several ATCO affiliates within Alberta as Utility affiliates for ATCO Electric. FortisAlberta contended that the only difference in the case of FortisAlberta is that the two utility affiliates that are engaged in similar utility activities are on opposite sides of the Alberta/BC border.

FortisAlberta noted Decision 2004-054 was cited by REA/AAMDC. However, that Decision noted (p. 5) the unique relationship between ATCO Electric and Northern Utilities whereby "the services provided by AE to the Northern Utilities did not fit neatly into either 'For Profit' or 'Shared Services' Code definitions." FortisAlberta argued that this situation does not pertain with respect to the two Fortis utilities, where such services as may best be shared will be so shared on a Shared Services basis.

Also in Decision 2004-054, it was noted (p. 6) that the services involving the Northern Utilities were not documented with the same rigour as transactions between regulated and non-regulated affiliates. Again, FortisAlberta stated that that situation will not pertain in the case of FortisAlberta, where such affiliate transactions with FortisBC will be appropriately documented and tracked under the Code of Conduct.

Finally, FortisAlberta noted that in the end, the Board did approve the Cost Recovery Basis for services between ATCO Electric and Northern Utilities in Decision 2004-054. As such, FortisAlberta submitted that REA/AAMDC's preemptive request to direct FMV pricing was thus not appropriate, nor did the Decision alluded to by REA/AAMDC provide support for their request.

4 VIEWS OF THE BOARD

The Board has reviewed the submissions of the parties and notes that no party has submitted an objection to the actual content of the proposed Fortis Code, save for the date to be included in Section 2.4. Rather, the objections received by parties relate either to the timeliness proposed for implementation of the provisions of the Fortis Code or issues related to its application. As such, with the exception of the date to be provided in Section 2.4, which shall be discussed in further detail below, the Board approves the Fortis Code as filed.

The Board approved Fortis Code is included in this Decision as Appendix 1.

The Board will now direct its attention to the two procedural issues raised by the parties, namely: (1) the Coming Into Force Date and; (2) the designation of FortisBC.

Coming Into Force Date

The Board has considered the arguments presented by the parties as noted in the previous sections and does not consider it either practical or fair to impose an effective date that is retroactive. The Board notes that REA/AAMDC's major concern appears to be the ability to benchmark 2004 costs to 2005 forecasts. The Board has considered FortisAlberta's submission that it has priced its 2004 affiliate transactions in accordance with the proposed Fortis Code and as such, the Board considers that it should be possible to elicit sufficient evidence during a 2005 hearing process to adequately test the forecast for that test period without having to set a retroactive date for compliance. The Board is further persuaded by FortisAlberta's argument that imposing a retroactive date for compliance would necessitate the expenditure of unnecessary time and resources by FortisAlberta to create contracts for transactions that have already ceased given the passage of time.

In arriving at this determination, the Board notes that its approach is consistent with past decisions in this regard and while the Board is not bound by precedent, it does consider that consistency on matters before it is valuable to parties when it is possible to achieve it.

The Board therefore directs FortisAlberta to adopt an in force date of January 31, 2005. The Board further directs FortisAlberta to file a Compliance Plan with the Board for approval by March 1, 2005.

Designation of FortisBC

REA/AAMDC's position is that since FortisBC was not regulated in the Province of Alberta it does not fall within the definition of a Utility Affiliate and therefore should be treated as a Non-Utility Affiliate.

FortisAlberta's position is that definitional semantics aside, in practical terms FortisAlberta and FortisBC are two utility affiliates engaged in similar utility activities that happen to be on opposite sides of the Alberta/B.C. border.

The Board agrees with REA/AAMDC that FortisBC does not meet the definition of "Utility" as provided for in the Fortis Code and agrees that it should be categorized as a "Non-Utility" affiliate.

Although the Board is not prepared to designate FortisBC as a "Utility" within the definition of the FortisCode, the Board will address the further issue raised by the parties as to how to price the services shared between FortisAlberta and FortisBC, notwithstanding the designation of FortisBC as a "Non-Utility" affiliate.

Categorizing the Services Provided by FortisAlberta to FortisBC

In Decision 2004-054, the Board approved ATCO Electric's request to provide services to the Northern Utility affiliates on a Cost Recovery Basis although the Northern Utilities were categorized as "Non-Utility" affiliates. Under the terms of the ATCO Code, Non-Utility affiliates that provide services to or receive services from a Utility affiliate must cost these services on a FMV basis. In arriving at its decision to treat the services between ATCO Electric and its Northern Utility affiliates as "Shared Services" rather than on a "For Profit" basis as such terms

are defined by the ATCO Code, the Board noted the small size of these Northern Utilities, the difficulty in determining FMV for the shared services in the northern market, and the presence of regulatory oversight for the Northern Utilities when considered together, provided mitigating factors that enabled the Board to determine that pricing those services on a shared cost basis was the most equitable and reasonable course of action. Further, the Board considered that the Northern Utilities generated certain economies of scale that would serve to reduce costs that would otherwise be borne by Alberta customers. For all of these reasons, the Board permitted ATCO Electric and its Northern Utility affiliates to exchange services on a “Shared Services” basis which permitted AE to cost these services on a “Cost Recovery Basis”.

In the present Application, the Board notes REA/AAMDC submission that unlike ATCO Electric and its Northern Affiliates, the transactions between FortisAlberta and FortisBC were material in nature, and that a FMV for these types of services would not be difficult to obtain. As such, REA/AAMDC submitted the affiliate transactions provided by FortisAlberta to FortisBC should be priced at FMV as this would ensure that regulated customers in Alberta are not cross-subsidizing the services provided to affiliates outside the jurisdiction of the AEUB.

In reply, the Board has considered FortisAlberta’s submission that in Decision 2004-054, the services involving Northern Utilities were not documented with the same rigour as transactions between regulated and non-regulated affiliates. FortisAlberta stated that in its case such affiliate transactions with FortisBC would be appropriately documented and tracked under the Code of Conduct.

As noted by REA/AAMDC, the Board, in its Decision 2003-040, recognized that a code of conduct should not be so restrictive as to preclude economically efficient transactions, so long as ratepayers are not harmed by those transactions. Moreover, the Board noted that the standards and rules of a code of conduct were intended to provide the utility with clearly defined flexibility to enter into affiliate transactions while promoting fairness and accountability and thereby building ratepayer confidence and trust.

Having considered the submissions advanced by the parties, the Board is not prepared at this time to permit FortisAlberta and FortisBC to exchange services on a “Shared Services” basis which would allow FortisAlberta and FortisBC to price such services on a Cost Recovery basis as opposed to FMV. In arriving at this decision, the Board notes that FortisAlberta, unlike ATCO Electric, has provided the Board with no supporting evidence to justify deviation from the provisions of the Fortis Code. The Board has considered FortisAlberta’s submission that it intends to share services as between FortisBC and FortisAlberta in a manner that makes sense as between the utilities and their customers. However, apart from this stated intention, the applicant has not identified what these shared services will be or why the arrangement will benefit Alberta customers. Further, the applicant has not provided any indication as to whether there is any difficulty in arriving at a FMV for the services exchanged; nor has it provided any indication of the manner of regulatory oversight of FortisBC or how such regulatory oversight would determine appropriate costs in the absence of a market for such services.

The Board notes that situations might already exist, or arise from time to time, whereby ratepayers or shareholders could be inadvertently harmed by the strict application of certain provisions of the Fortis Code. Accordingly, the Board understands that FortisAlberta may seek exemptions from time to time from particular provisions of the Fortis Code. In this context, should the applicant wish to bring forward an exemption application to this Board including

sufficient information to support a request to price the services between FortisAlberta and FortisBC on a Cost Recovery basis, it is open to the applicant to do so.

To acknowledge implementation of the Fortis Code, the Board directs FortisAlberta to file with the Board, prior to January 31, 2005, a written acknowledgement verifying that:

- the provisions of the Fortis Code have been endorsed by the Board of Directors of FortisAlberta;
- a Compliance Officer for FortisAlberta has been appointed pursuant to section 7.3 of the Fortis Code; and
- except for agreements or arrangements to be brought into compliance by January 31, 2005, the provisions of the Fortis Code will be implemented immediately by FortisAlberta.

5 ORDER

The Board therefore orders that:

- (1) The Fortis Code, as included as Appendix 1, is approved.
- (2) FortisAlberta shall implement the provisions of the Fortis Code by no later than January 31, 2005.
- (3) FortisAlberta shall file with the Board, prior to the foregoing implementation date, an acknowledgement as directed in the Decision.
- (4) FortisAlberta shall be in full compliance with the Fortis Code on or before January 31, 2005.
- (5) FortisAlberta shall file its initial Compliance Plan with the Board on or before March 1, 2005.

Dated in Calgary, Alberta on January 17, 2005.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

T. McGee
Presiding Member

(original signed by)

B. T. McManus, Q.C.
Member

(original signed by)

M. J. Bruni, Q.C.
Member

APPENDIX 1 – FORTIS CODE OF CONDUCT AS APPROVED



Appendix 1- Decision
2005-002.doc

(consists of 17 pages)



**FORTISALBERTA INC.
INTER-AFFILIATE
CODE OF CONDUCT**

1 PURPOSE AND OBJECTIVES OF THE CODE

1.1 Purpose and Objectives of the Code

The purpose and objectives of this Code of Conduct follow those established by the EUB in their Decision 2003-040 (page 38) with respect to the ATCO Group of businesses and the need to respect the spirit and intent behind the Code in the following words:

Purpose of the Code

The purpose of this Code is to establish standards and conditions for interaction between each FortisAlberta Inc. (FortisAlberta) Utility and its Utility and Non-Utility Affiliates. This Code attempts to anticipate and adjust for the potential misalignment of interest between shareholders and Utility customers occasioned by Affiliate interactions through the establishment of parameters for transactions, information sharing and the sharing of services and resources, while permitting economies of scale and operating efficiencies.

These parameters are intended to:

- (a) prevent Utilities from cross-subsidizing Affiliate activities;
- (b) protect confidential customer information collected in the course of providing Utility services;
- (c) ensure Affiliates and their customers do not have preferential access to Utility services; and
- (d) avoid uncompetitive practices between Utilities and their Affiliates, which may be detrimental to the interests of Utility customers.

Objectives of Code

While the overall purpose of the Code is to establish standards and parameters that prohibit inappropriate Affiliate conduct, preferences or advantages, which may adversely impact the customers of regulated businesses, this purpose reflects several important underlying objectives, including:

- (a) creating a clearly defined set of rules designed to enhance inter-affiliate transparency, fairness and senior management accountability

with respect to inter-affiliate interactions impacting regulated businesses;

- (b) providing an environment in which inter-affiliate economies and efficiencies can legitimately occur for the mutual advantage of both a Utility's customers and its shareholders;
- (c) developing support and respect for the Code by the employees, officers and directors of FortisAlberta, which will in turn promote ratepayer confidence in the application of the Code; and
- (d) the creation of regulatory processes and cost efficiencies through the consistent application of a clear set of standards and reporting requirements to Utility inter-affiliate transactions, enhanced by a practical, resolution driven, dispute process.

Respect for the Code

Standards and rules alone, however, will always be insufficient to achieve the objectives of this Code. These objectives can only be fully realized through a demonstrated respect for the spirit and intent behind the words by those individuals to whom the Code applies.

1.2 Application

This Code is not meant to replace or modify in any manner, any statutory or regulatory requirements relating to Utilities.

2 GENERAL PROVISIONS

2.1 Definitions

In this Code the following words and phrases shall have the following meanings:

- a) **"ABCA"** means the *Business Corporations Act*, R.S.A.2000 c. B-9.
- b) **"Affiliate"** means with respect to any Utility:
 - i) an "affiliate" as defined in the ABCA;
 - ii) a unit or division within the Utility or any Body Corporate referred to in clause (b)(i) above;
 - iii) a partnership, joint venture, or Person in which the Utility or any Body Corporate referred to in clause (b)(i) above has a controlling interest or that is otherwise subject to the control of the Utility or such Body Corporate;

Code of Conduct

- iv) any partnership, joint venture, or Person deemed by the EUB to be an affiliate of the Utility for the purposes of this Code; and
- v) an agent or other Person acting on behalf of any Body Corporate, operating division, partnership, joint venture or Person referred to in clauses (b)(i) to (iv) above.
- c) **“Affiliated Party Transactions Summary”** unless otherwise directed by the EUB, means in respect of any period of time, a summary overview of each type of business transaction or service, other than Major Transactions or Utility Services, performed by an Affiliate for a Utility or by a Utility for an Affiliate, which summary shall contain a general description of the transactions and services, the parties involved and the approximate aggregate value of each type of transaction or service during the said period.
- d) **“Body Corporate”** means a “body corporate” as defined in the ABCA.
- e) **“Code”** means this FortisAlberta Inter-Affiliate Code of Conduct.
- f) **“Compliance Officer”** shall have the meaning ascribed thereto in section 7.3 hereof.
- g) **“Compliance Plan”** shall mean the document to be prepared and updated by a Utility pursuant to section 7.5 hereof.
- h) **“Compliance Report”** shall have the meaning ascribed thereto in section 7.6 hereof.
- i) **“Confidential Information”** means any information relating to a specific customer or potential customer of a Utility, which information the Utility has obtained or compiled in the process of providing current or prospective Utility Services and which is not otherwise available to the public.
- j) **“Cost Recovery Basis”** with respect to:
 - i) the use by one Affiliate of another Affiliate’s personnel, means the fully burdened costs of such personnel for the time period they are used by the Affiliate, including salary, benefits, vacation, materials, disbursements and all applicable overheads;
 - ii) the use by one Affiliate of another Affiliate’s equipment, means an allocated share of capital and operating costs appropriate for the time period utilized by the Affiliate;
 - iii) the use by a Utility of an Affiliate’s services, means the complete costs of providing the service, determined in a manner acceptable to the Utility, acting prudently;

Code of Conduct

- iv) the use by an Affiliate of a Utility's services, means the complete costs of providing the service, determined in a manner acceptable to the Utility, acting prudently; and
 - v) the transfer of equipment, plant inventory, spare parts or similar assets between Utilities, means the net book value of the transferred assets.
- k) **"EUB"** means the Alberta Energy and Utilities Board.
- l) **"Fair Market Value"** means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act.
- m) **"For Profit Affiliate Service"** means any service, provided on a for-profit basis:
- i) by a Utility to a Non-Utility Affiliate, other than a Utility Service; or
 - ii) by a Non-Utility Affiliate to a Utility.
- n) **"FortisAlberta"** means FortisAlberta Inc.
- o) **"FortisAlberta Affiliates"** means any entity to which this Code applies pursuant to section 2.3 hereof.
- p) **"Information Services"** means any computer systems, computer services, databases, electronic storage services or electronic communication media utilized by a Utility relating to Utility customers or Utility operations.
- q) **"Major Transaction"** means a transaction or series of related transactions within a calendar year between a Utility and an Affiliate relating to the sale or purchase of an asset(s) or to the provision of a service or a similar group of services, other than Utility Services, which has an aggregate value within that calendar year of \$500,000 or more.
- r) **"Non-Utility Affiliate"** means an Affiliate that is not a Utility.
- s) **"Occasional Services"** shall have the meaning ascribed thereto in section 3.3.6 hereof.
- t) **"Person"** means a "person" as defined in the ABCA.
- u) **"Services Agreement"** means an agreement entered into between a Utility and one or more Affiliates for the provision of Shared Services or For Profit Affiliate Services and shall provide for the following matters as appropriate in the circumstances:
- i) the type, quantity and quality of service;
 - ii) pricing, allocation or cost recovery provisions;

Code of Conduct

- iii) confidentiality arrangements;
 - iv) the apportionment of risk;
 - v) dispute resolution provisions; and
 - vi) a representation by the Utility and each Affiliate party to the agreement that the agreement complies with the Code.
- v) **“Shared Service”** means any service, other than a Utility Service or a For Profit Affiliate Service, provided on a Cost Recovery Basis by a Utility to an Affiliate or by an Affiliate to a Utility.
- w) **“Subsidiary”** shall have the meaning ascribed thereto in section 2(4) of the ABCA.
- x) **“Utility”** means any Body Corporate or any unit or division thereof, that provides a Utility Service and falls within the definition of:
- i) “electric utility” under the *Electric Utilities Act*, S.A. 2003, c. E-5.1;
 - ii) “gas utility” under the *Gas Utilities Act*, R.S.A. 2000, c. G-5; or
 - iii) “public utility” under the *Public Utilities Board Act*, R.S.A. 2000, c. P-45.
- y) **“Utility Service”** means a service, the terms and conditions of which are regulated by the EUB, and includes services for which an individual rate, joint rate, toll, fare, charge or schedule of them, have been approved by the EUB.

2.2 Interpretation

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 statute, document or a provision of a document includes an amendment or supplement to, or a replacement of, that statute, document or that provision of that document.

2.3 To Whom this Code Applies

All Utilities directly or indirectly owned, controlled or operated by FortisAlberta are obligated to comply with this Code and all Affiliates of these Utilities are obligated to comply with the Code to the extent they interact with the Utilities.

2.4 Coming into Force

This Code comes into force on January 1, 2005.

2.5 Amendments to this Code

This Code may be reviewed and amended from time to time by the EUB on its own initiative, or pursuant to a request by any party to whom this Code applies or by any interested party.

2.6 Exemptions

A party to whom this Code applies may apply to the EUB for an exemption with respect to compliance with any provision of this Code. Any such application will specify if the requested exemption is in respect of a particular transaction, series of transactions, for a specified period of time, or is for a general exemption from a particular provision.

2.7 Authority of the EUB

Although this Code has been approved by the EUB, such approval does not detract from, reduce or modify in any way, the powers of the EUB to deny, vary, approve with conditions, or overturn, the terms of any transaction or arrangement between a Utility and one or more Affiliates that may be done in compliance with this Code. Compliance with the Code does not eliminate the requirement for specific EUB approvals or filings where required by statute or by EUB decisions, orders or directions.

3 GOVERNANCE AND SEPARATION OF UTILITY BUSINESSES

3.1 Governance

3.1.1 Separate Operations

The business and affairs of a Utility should be managed and conducted separately from the business and affairs of its Non-Utility Affiliates, except as required to fulfill corporate governance, policy, and strategic direction responsibilities of a corporate group of businesses as a whole.

3.1.2 Common Directors

A Utility may have common directors with its Affiliates.

3.1.3 Separate Management

Subject to section 3.1.4 hereof, a Utility must have a separate management team and separate officers from its Non-Utility Affiliates, but may share management team members or officers with other Affiliated Utilities.

3.1.4 Separate Management Exception

Officers of a Utility may also be officers of any Affiliate of which the Utility is a Subsidiary or of any Affiliate that is a Subsidiary of the Utility, as may be required to perform corporate governance, policy and strategic direction responsibilities of an affiliated group of businesses.

3.1.5 Guiding Principle

Notwithstanding sections 3.1.2, 3.1.3 and 3.1.4 hereof, an individual shall not act both as a director, officer or member of a management team of a Utility and as a director, officer or member of a management team of any other Affiliate (thereby acting in a dual capacity) unless the individual is able to carry out his/her responsibilities in a manner that preserves the form, and the spirit and intent, of this Code. In particular, an individual:

- a. shall not agree to act in a dual capacity if it could reasonably be considered to be detrimental to the interests of customers of the Utility, and
- b. if acting in a dual capacity, shall abstain from engaging in any activity that could reasonably be considered to be detrimental to the interests of customers of the Utility.

3.2 Degree of Separation

3.2.1 Accounting Separation

A Utility shall ensure accounting separation from all Affiliates and shall maintain separate financial records and books of accounts.

3.2.2 Physical Separation

A Utility shall be located in a separate building or shall otherwise be physically separated from all Non-Utility Affiliates through the use of appropriate security-controlled access.

3.2.3 Separation of Information Services

Where a Utility shares Information Services with an Affiliate, all Confidential Information must be protected from unauthorized 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 shall be periodically confirmed by the Utility, through a review that complies with the provisions of the Canadian Institute of Chartered Accountants Handbook and updates thereto.

3.2.4 Financial Transactions with Affiliates

A Utility shall ensure that any loan, investment, or other financial support provided to a Non-Utility Affiliate is provided on terms no more favorable than what that Non-Utility Affiliate would be able to obtain as a stand-alone entity from the capital markets.

3.3 Resource Sharing

3.3.1 Sharing of Employees

A Utility may share employees on a Cost Recovery Basis with an Affiliate provided that the employees to be shared:

- a. do not have access to Confidential Information;
- b. do not routinely participate in making decisions with respect to the provision of Utility Services or how Utility Services are delivered;
- c. do not routinely deal with or have direct contact with customers of the Utility; and
- d. are not, subject to the provisions of section 3.1.4 hereof, routinely involved in operating, planning or managing the business of the Utility.

3.3.2 Transferring of Employees

A Utility may transfer employees to or from an Affiliate, provided any employee transferred by the Utility who had access to Confidential Information shall execute a confidentiality agreement with respect to such Confidential Information prior to the transfer.

3.3.3 Sharing of Assets

The plant, assets and equipment of a Utility shall be separated in ownership and separated physically from the plant, assets and equipment of other Non-Utility Affiliates. Utility Affiliates may share ownership and may physically share office space, equipment, rights-of-way and other assets on a Cost Recovery Basis.

3.3.4 Shared Services Permitted

Where a Utility determines it is prudent in operating its Utility business to do so, it may obtain Shared Services from, or provide Shared Services to, an Affiliate. Utilities shall periodically review the prudence of continuing Shared Services arrangements with a view to making any necessary adjustments to ensure that each of the Utilities and its Affiliates bears its proportionate share of costs.

3.3.5 Services Agreement

A Utility shall enter into a Services Agreement with respect to any Shared Services it provides to, or acquires from, an Affiliate.

3.3.6 Occasional Services Permitted

Where a Utility has otherwise acted prudently, a Utility may receive, or provide, one-off, infrequent or occasional services (“**Occasional Services**”) to, or from, an Affiliate on a Cost Recovery Basis, documented by way of work order, purchase order or similar instrument. In the event that occasional services become material as

to value, frequency or use of resources, the Utility shall enter into a Services Agreement with the Affiliate for Shared Services.

3.3.7 Emergency Services Permitted

In the event of an emergency, a Utility may share services and resources with an Affiliate without a Services Agreement on a Cost Recovery Basis.

4 TRANSFER PRICING

4.1 For Profit Affiliate Services

Where a Utility determines it is prudent in operating its Utility business to do so, it may obtain For Profit Affiliate Services from an Affiliate or provide For Profit Affiliate Services to an Affiliate.

If a Utility intends to outsource to an Affiliate a service it presently provides for itself, the Utility shall, in addition to any other analysis it may require to demonstrate the prudence of a For Profit Affiliate Services arrangement, undertake a net present value analysis appropriate to the life cycle or operating cycle of the services involved.

Each Utility shall periodically review the prudence of continuing For Profit Affiliate Services arrangements.

4.2 Pricing For Profit Affiliate Services

4.2.1 Utility Acquires For Profit Affiliate Service

When a Utility acquires For Profit Affiliate Services it shall pay no more than the Fair Market Value of such services. The onus is on the Utility to demonstrate that the For Profit Affiliate Services have been acquired at a price that is no more than the Fair Market Value of such services.

4.2.2 Utility Provides For Profit Affiliate Service

When a Utility provides For Profit Affiliate Services, it shall not charge less than the Fair Market Value of such services. The onus is on the Utility to demonstrate that the For Profit Affiliate Services have been charged at a price that is not less than the Fair Market Value of such services.

4.3 Services Agreement

A Utility shall enter into a Services Agreement with respect to any For Profit Affiliate Services it acquires or provides.

4.4 Asset Transfers

Subject to section 4.6 hereof, assets transferred, mortgaged, leased or otherwise disposed of by a Utility to an Affiliate or by an Affiliate to a Utility shall be at Fair Market Value.

4.5 Determination of Fair Market Value

In demonstrating that Fair Market Value was paid or received pursuant to a For Profit Affiliate Service arrangement or a transaction contemplated by sections 4.1, 4.2 and 4.4 hereof, the Utility, subject to any prior or contrary direction by the EUB, may utilize any method to determine Fair Market Value that it believes appropriate in the circumstances. These methods may include, without limitation: competitive tendering, competitive quotes, bench-marking studies, catalogue pricing, replacement cost comparisons or recent market transactions. The Utility shall bear the onus of demonstrating that the methodology or methodologies utilized in determining the Fair Market Value of the subject goods or services was appropriate in the circumstances.

4.6 Asset Transfers Between Utilities for Operational Efficiencies

Where operational efficiencies between Utilities that are Affiliates can be obtained through the use of common facilities (such as shared warehousing or field offices), combined purchasing power or through the use of other cost saving procedures, individual assets or groups of assets used in Utility operations (such as equipment, plant inventory, spare parts or similar assets) may be transferred in the ordinary course of business between Utilities on a Cost Recovery Basis. All such transactions shall be properly accounted for on the books of the Utilities involved.

5 EQUAL TREATMENT WITH RESPECT TO UTILITY SERVICES

5.1 Impartial Application of Tariff

A Utility shall apply and enforce all tariff provisions relating to Utility Services impartially, in the same timeframe, and without preference in relation to its Affiliates and all other customers or prospective customers.

5.2 Equal Access

A Utility shall not favor any Affiliate with respect to access to information concerning Utility Services or with respect to the obtaining of, or the scheduling of, Utility Services. Requests by an Affiliate or an Affiliate's customers for access to Utility Services shall be processed and provided in the same manner as would be processed or provided for other customers or prospective customers of the Utility.

5.3 No Undue Influence

A Utility shall not condition or otherwise tie the receipt of Utility Services to a requirement that a customer must also deal with an Affiliate. Each Utility shall ensure that its employees do not, explicitly or by implication, suggest that an advantage will accrue to a customer in dealing with the Utility if the customer also deals with an Affiliate of the Utility.

5.4 Affiliate Activities

A Utility shall take reasonable steps to ensure that an Affiliate does not imply in its marketing material or otherwise, favored treatment or preferential access to Utility Services. If the Utility becomes aware of any such inappropriate 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 EUB in writing of such activity and the remedial measures that were undertaken by the Utility.

5.5 Name and Logo

A Utility shall take reasonable steps to ensure that an Affiliate does not use the Utility's name, logo or other distinguishing characteristics in a manner that would mislead consumers as to the distinction or a lack of distinction between the Utility and the Affiliate.

5.6 Access to Shared and Occasional Services

A Utility is not required to provide non-Affiliated parties with equal access to Shared Services or Occasional Services.

6 CONFIDENTIALITY OF INFORMATION

6.1 Utility Information

Subject to section 6.2 hereof, a Utility shall not provide Non-Utility Affiliates with information relating to the planning, operations, finances or strategy of the Utility or of an Affiliated Utility before such information is publicly available.

6.2 Management Exception

Officers of a Utility who are also officers of an Affiliate as permitted pursuant to section 3.1.4 hereof may disclose, subject to the provisions of section 3.1.5 hereof, Utility planning, operational, financial and strategic information to the Affiliate to fulfill their responsibilities with respect to corporate governance, policy and strategic direction of an affiliated group of businesses, but only to the extent necessary and not for any other purpose.

6.3 No Release of Confidential Information

A Utility shall not release to an Affiliate Confidential Information relating to a customer or prospective customer, without receiving the prior written consent of the customer or prospective customer, unless such Confidential Information may be disclosed to an Affiliate in connection with a disclosure required:

- a) for the purpose of a court proceeding or a proceeding before a quasi-judicial body to which the customer is a party;
- b) for the purpose of complying with a subpoena, warrant, or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;
- c) to a municipal or provincial police service for the purpose of investigating an offence involving the customer, if the disclosure is not contrary to the express request of the customer;
- d) by law or by an order of a government or agency having jurisdiction over the Utility; or
- e) for the purpose of providing Shared Services or For Profit Affiliate Services to the Affiliate or for the purpose of receiving Shared Services or For Profit Affiliate Services from the Affiliate; provided appropriate measures are first put in place by the Affiliate to protect the Confidential Information and the Confidential Information is used by the Affiliate only for the purpose intended by the Utility.

6.4 Aggregated Confidential Information

A Utility may disclose Confidential Information when aggregated with the Confidential Information of other customers in such a manner that an individual customer's Confidential Information can not be identified, provided that the Utility shall not disclose such aggregated customer information to an Affiliate prior to making such information publicly available.

7 COMPLIANCE MEASURES

7.1 Responsibility for Compliance

Each Utility shall be responsible for ensuring compliance with this Code.

7.2 Communication of Code

Each Utility shall:

- a) communicate the contents of the Code, and any modifications to it from time to time, to each of its directors, officers, employees, consultants, contractors, agents and Affiliates; and

- b) make the Code available on the Utility's web site.

7.3 Compliance Officer

Each Utility shall appoint a compliance officer (the "Compliance Officer"). The same individual may be the Compliance Officer for more than one Utility. The Utility shall ensure that the Compliance Officer is an officer of the Utility and has adequate resources to fulfill his or her responsibilities.

7.4 Responsibilities of the Compliance Officer

The responsibilities of the Compliance Officer shall include:

- a) providing advice and information to the Utility for the purpose of ensuring compliance with this Code;
- b) monitoring and documenting compliance with the Code by the Utility, its directors, officers, employees, consultants, contractors and agents;
- c) monitoring and documenting compliance with the Code by Affiliates of the Utility with respect to the interactions of the Affiliates with the Utility;
- d) providing for the preparation and updating, of a Compliance Plan for the Utility pursuant to Section 7.5 hereof;
- e) filing the Compliance Plan and any modifications or replacements with the EUB, posting the Compliance Plan on the Utility's website, and advising interested parties promptly when the Compliance Plan, or any modifications or replacements, have been posted on the website;
- f) performing an annual review of compliance with the Compliance Plan and preparing an annual compliance report ("**Compliance Report**") containing the information required in section 7.6 hereof. The Compliance Officer shall file the Compliance Report with the EUB within 120 days of the fiscal year end of the Utility with respect to the immediately preceding fiscal year, post the Compliance Report on the Utility's website, and advise interested parties promptly when the Compliance Report has been posted on the website;
- g) receiving and investigating internal and external disputes, complaints and inquiries with respect to the application of, and alleged non-compliance, with the Code in accordance with Section 8 hereof;
- h) recommending to the Utility measures required to address events of non-compliance with the Code; and
- i) maintaining adequate records with respect to all aspects of the Compliance Officer's responsibility.

7.5 The Compliance Plan

Each Utility shall prepare a Compliance Plan. The Compliance Plan shall detail the measures, policies, procedures and monitoring mechanisms that the Utility will employ to ensure its full compliance with the provisions of the Code by the Utility its directors, officers, employees, consultants, contractors and agents, and by Affiliates of the Utility with respect to the interactions of the Affiliates with the Utility. The Utility shall review and update the Compliance Plan at least annually.

7.6 The Compliance Report

The Compliance Report shall include the following information prepared in respect to the period of time covered by the Compliance Report:

- a) a copy of the Compliance Plan and any amendments thereto;
- b) a corporate organization chart for the Utility and its Affiliates indicating relationships and ownership percentages;
- c) a list of all Affiliates with whom the Utility transacted business, including business addresses, a list of the Affiliates' officers and directors, and a description of the Affiliates' business activities;
- d) a list of all Services Agreements in effect at any time during such period;
- e) an overall assessment of compliance with the Code by the Utility, including compliance by the directors, officers, employees, consultants, contractors and agents of the Utility and by Affiliates of the Utility with respect to the interactions of the Affiliates with the Utility;
- f) an assessment of the effectiveness of the Compliance Plan and any recommendations for modifications thereto;
- g) in the event of any material non-compliance with the Code, a comprehensive description thereof and an explanation of all steps taken to correct such non-compliance;
- h) subject to the confidentiality provisions of section 8.1 hereof, a summary of disputes, complaints and inquiry activity during the year;
- i) a list and detailed description of all Major Transactions between the Utility and its Affiliates;
- j) an Affiliated Party Transactions Summary;
- k) a summary description together with an estimated aggregate value for each Occasional Service provided by the Utility to an Affiliate and by Affiliates to the Utility;
- l) a summary list of any exemptions granted to this Code or exceptions utilized, including the exception for emergency services;

- m) a list of all employee transfers, temporary assignments and secondments between a Utility and its Affiliates, detailing specifics as to purpose, dates and duration of such employee movements; and
- n) two certificates, each in the form attached as Schedule “A” attached to this Code, attesting to completeness of the Compliance Report and compliance with the Code, one certificate signed by the Compliance Officer and a second certificate signed by the highest ranking operating officer of the Utility.

7.7 Documents to be Provided to the EUB upon Request

If required by the EUB, a Utility shall provide the EUB with a copy of any document referred to in a Compliance Report or other supporting records and material.

7.8 Compliance Records and Audit

The records required to be maintained by the Compliance Officer pursuant to section 7.4(i) hereof shall be retained for a period of at least six years. Compliance records shall be maintained in a manner sufficient to support a third party audit of the state of compliance with the Code by the Utility, its directors, officers, employees, consultants, contractors and agents, and by Affiliates of the Utility with respect to the interactions of the Affiliates with the Utility. Subject to the confidentiality provisions of section 8.1 hereof, all such records shall be made available for inspection or audit as may be required by the EUB from time to time.

8 DISPUTES, COMPLAINTS AND INQUIRIES

8.1 Filing with the Compliance Officer

Disputes, complaints or inquiries from within the Utility or from external parties respecting the application of, or alleged non-compliance with, the Code shall be submitted in writing to the Compliance Officer and may be made confidentially. The identity of the party making the submission to the Compliance Officer shall be kept confidential by the Compliance Officer unless the party otherwise agrees.

8.2 Processing by Utility

8.2.1 Compliance Officer Acknowledgment

The Compliance Officer shall acknowledge all disputes, complaints or inquiries in writing within five working days of receipt.

8.2.2 Disposition

The Compliance Officer shall respond to the dispute, complaint or inquiry within 21 working days of its receipt. The response shall include a description of the dispute,

complaint or inquiry and the initial response of the Utility to the issues identified in the submission. The Utility's final disposition of the dispute, complaint or inquiry shall be completed as expeditiously as possible in the circumstances, and in any event within 60 days of receipt of the dispute, complaint or inquiry, except where the party making the submission otherwise agrees.

8.3 Referral to the EUB

In the event:

- a) a Utility fails to abide by the process identified in section 8.2 hereof,
- b) the Utility or a party is unsatisfied with the resolution of a dispute, complaint or inquiry following the conclusion of the section 8.2 process, or
- c) of an urgent and significant matter, where there is a reasonable expectation that a party's position may be prejudiced by allowing the process contemplated by section 8.2 to operate,

the Utility (subject to the confidentiality provisions of section 8.1 hereof) or a party with a dispute, complaint or inquiry may refer the matter to the EUB for consideration. A referral to the EUB must be in writing and shall describe the dispute, complaint, or inquiry and must include the response, if any, of the Utility to the submission.

9 NON-COMPLIANCE WITH THE CODE

9.1 Non-Compliance

Any non-compliance with the Code by any director, officer, employee, consultant, contractor or agent of a Utility or by an Affiliate (or any director, officer, employee, consultant, contractor or agent of an Affiliate) with respect to the interactions of the Affiliate with the Utility will be considered to be non-compliance by the Utility.

9.2 Consequences for Non-Compliance with Code

Non-compliance with this Code could be considered as *prima facie* evidence in a regulatory proceeding of inappropriate conduct by a Utility or of an inappropriate transaction, expense or activity by the Utility. Non-compliance with the Code by a Utility shall subject the Utility to the full range of powers and authorities of the EUB. Non-compliance with the Code by a director, officer, employee, consultant, contractor or agent of a Utility may subject such individual to disciplinary action by the Utility.

SCHEDULE A – OFFICERS CERTIFICATE**OFFICER’S CERTIFICATE**

To: The Alberta Energy and Utilities Board

I, _____ of the City of _____, in the Province of Alberta, acting in my position as an officer of _____ (the Utility) and not in my personal capacity, to the best of my knowledge do hereby certify as follows:

1. My position with the Utility is _____, and as such I have personal knowledge of, or have conducted due inquiry of individuals who have personal knowledge of, the facts and matters herein stated.
2. Capitalized terms used herein (which are not otherwise defined herein) shall have the meanings ascribed thereto in the FortisAlberta Inter-Affiliate Code of Conduct (the Code).
3. I have read the Code, the Compliance Plan of the Utility dated _____ and the Compliance Report of the Utility dated _____.
4. The form and contents of the Compliance Report comply with the requirements of the Code and the matters reported therein are fully and accurately described.
5. I am not aware of any material non-compliance with the provisions of the Code by any director, officer, employee, consultant, contractor or agent of the Utility, or by any Affiliate of the Utility (including any director, officer, employee, consultant, contractor or agent of the Affiliate) with respect to the any interaction between an Affiliate and the Utility that is not fully and accurately described in the Compliance Report.

Name: _____

Title: _____

Date: _____



**FORTISALBERTA INC.
INTER-AFFILIATE CODE OF CONDUCT
COMPLIANCE PLAN
August, 2009**

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1 PURPOSE AND OBJECTIVES OF THE COMPLIANCE PLAN

The purpose of this plan is to detail the measures, policies, procedures and monitoring mechanisms that FortisAlberta will employ to ensure its full compliance with the provisions of the Code by FortisAlberta, its directors, officers, employees, consultants, contractors and agents, and by Affiliates of FortisAlberta with respect to the interactions of the Affiliates with FortisAlberta.

This Compliance Plan describes certain obligations and responsibilities of specified FortisAlberta management personnel. Notwithstanding this, and without otherwise reducing or eliminating the obligation and responsibility of the specified FortisAlberta management personnel to ensure any specific requirements of this Compliance Plan are satisfied, it is understood that all or a portion of the tasks described in this Compliance Plan may be delegated by the specified FortisAlberta management to other FortisAlberta personnel.

Questions or comments concerning the Compliance Plan should be directed to the FortisAlberta Compliance Officer:

Bob Fink
Phone: (403) 514-4083
Fax: (403) 514-5083
Email: bob.fink@fortisalberta.com

These or other questions or comments may also be directed to the AUC:

AUC, Audit and Compliance Group
Phone: (403) 592-8845
Email: UtilitiesConcerns@auc.ab.ca

Copies of the Code and this Compliance Plan are available at www.fortisalberta.com. The numbering used in this Compliance Plan is consistent with the numbering used in the Code.

2 GENERAL PROVISIONS

2.1 Definitions

In this Compliance Plan the following words and phrases shall have the following meanings:

- a) **“ABCA”** means the *Business Corporations Act*, R.S.A.2000 c. B-9.
- b) **“Affiliate”** means with respect to FortisAlberta:
 - 1) an “affiliate” as defined in the ABCA;



- 2) a unit or division within FortisAlberta or any Body Corporate referred to in clause (b)(1) above;
 - 3) a partnership, joint venture, or Person in which FortisAlberta or any Body Corporate referred to in clause (b)(1) above has a controlling interest or that is otherwise subject to the control of FortisAlberta or such Body Corporate;
 - 4) any partnership, joint venture, or Person deemed by the AUC to be an affiliate of FortisAlberta for the purposes of the Code; and
 - 5) an agent or other Person acting on behalf of any Body Corporate, operating division, partnership, joint venture or Person referred to in clauses (b)(i) to (iv) above.
- c) **“Affiliated Party Transactions Summary”** unless otherwise directed by the AUC, means in respect of any period of time, a summary overview of each type of business transaction or service, other than Major Transactions or Utility Services, performed by an Affiliate for FortisAlberta or by FortisAlberta for an Affiliate, which summary shall contain a general description of the transactions and services, the parties involved and the approximate aggregate value of each type of transaction or service during the said period.
- d) **“AUC”** means the Alberta Utilities Commission.
- e) **“Body Corporate”** means a “body corporate” as defined in the ABCA.
- f) **“Code”** means the FortisAlberta Inter-Affiliate Code of Conduct.
- g) **“Compliance Officer”** shall have the meaning ascribed thereto in Section 7.3 of the Code.
- h) **“Compliance Plan”** shall mean the document to be prepared and updated by FortisAlberta pursuant to Section 7.5 of the Code.
- i) **“Compliance Plan Committee”** shall mean a committee which shall meet at least quarterly, comprised of at least the following:
- President & CEO
 - Vice President, Regulatory & Legal
 - Controller & Treasurer
 - Director Human Resources
 - Director, Regulatory Affairs
 - Compliance Officer
- j) **“Compliance Report”** shall have the meaning ascribed thereto in Section 7.6 of the Code. Quarterly, FortisAlberta will provide an exception report or a more detailed report, if there is a matter that ought to be brought to the attention of the AUC.



- k) **“Compliance Training Material”** means the material developed by the Compliance Officer prior to the end of each calendar year which will be used to ensure that all directors, officers, employees, consultants, contractors and agents of FortisAlberta are familiar with the provisions of the Code, and this Plan. At a minimum, the material will include instructions on:
- impartial application of the FortisAlberta tariff
 - equal access to Utility Services
 - avoiding undue influence of customers with respect to Affiliates
 - ensuring Affiliate compliance with the Code
 - appropriate use of the FortisAlberta name, logo, or other distinguishing characteristics
 - confidentiality of Utility information
 - treatment of Confidential Information related to customers
 - process for forwarding disputes, complaints or inquiries to the Compliance Officer
- l) **“Confidential Information”** means any information relating to a specific customer or potential customer of FortisAlberta, which information FortisAlberta has obtained or compiled in the process of providing current or prospective Utility Services and which is not otherwise available to the public.
- m) **“Corporate Governance Group”** means those directors, officers, and employees who have responsibility for corporate governance, policy, and strategic direction for both Utility and Non-Utility businesses within FortisAlberta.
- n) **“Cost Recovery Basis”** with respect to:
- 1) the use by one Affiliate of another Affiliate’s personnel, means the fully burdened costs of such personnel for the time period they are used by the Affiliate, including salary, benefits, vacation, materials, disbursements and all applicable overheads;
 - 2) the use by one Affiliate of another Affiliate’s equipment, means an allocated share of capital and operating costs appropriate for the time period utilized by the Affiliate;
 - 3) the use by FortisAlberta of an Affiliate’s services, means the complete costs of providing the service, determined in a manner acceptable to FortisAlberta, acting prudently;
 - 4) the use by an Affiliate of FortisAlberta’s services, means the complete costs of providing the service, determined in a manner acceptable to FortisAlberta, acting prudently; and
 - 5) the transfer of equipment, plant inventory, spare parts or similar assets between Utilities, means the net book value of the transferred assets.



- o) **“Fair Market Value”** means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act.
- p) **“For Profit Affiliate Service”** means any service, provided on a for-profit basis:
 - 1) by FortisAlberta to a Non-Utility Affiliate, other than a Utility Service; or
 - 2) by a Non-Utility Affiliate to FortisAlberta.
- q) **“FortisAlberta”** means FortisAlberta Inc.
- r) **“FortisAlberta Affiliates”** means any entity to which the Code applies pursuant to Section 2.3 of the Code.
- s) **“Information Services”** means any computer systems, computer services, databases, electronic storage services or electronic communication media utilized by FortisAlberta relating to FortisAlberta customers or FortisAlberta operations.
- t) **“Major Transaction”** means a transaction or series of related transactions within a calendar year between FortisAlberta and an Affiliate relating to the sale or purchase of an asset(s) or to the provision of a service or a similar group of services, other than Utility Services, which has an aggregate value within that calendar year of \$500,000 or more.
- u) **“Non-Utility Affiliate”** means an Affiliate that is not a Utility.
- v) **“Occasional Services”** shall have the meaning ascribed thereto in Section 3.3.6 of the code.
- w) **“Operational Efficiencies”** means the use of common facilities (such as shared warehousing or field offices), combined purchasing power or the use of other cost saving procedures, individual assets or groups of assets used in Utility operations (such as equipment, plant inventory, spare parts or similar assets).
- x) **“Person”** means a “person” as defined in the ABCA.
- y) **“Services Agreement”** means an agreement entered into between FortisAlberta and one or more Affiliates for the provision of Shared Services or For Profit Affiliate Services and shall provide for the following matters as appropriate in the circumstances:
 - 1) the type, quantity and quality of service;
 - 2) pricing, allocation or cost recovery provisions;
 - 3) confidentiality arrangements;
 - 4) the apportionment of risk;



- 5) dispute resolution provisions; and
- 6) a representation by FortisAlberta and each Affiliate party to the agreement that the agreement complies with the Code.
- z) **“Shared Service”** means any service, other than a Utility Service or a For Profit Affiliate Service, provided on a Cost Recovery Basis by FortisAlberta to an Affiliate or by an Affiliate to FortisAlberta.
- aa) **“Subsidiary”** shall have the meaning ascribed thereto in Section 2(4) of the ABCA.
- bb) **“Utility”** means any Body Corporate or any unit or division thereof, that provides a Utility Service and falls within the definition of:
 - 1) “electric utility” under the *Electric Utilities Act*, S.A. 2003, c. E-5.1;
 - 2) “gas utility” under the *Gas Utilities Act*, R.S.A. 2000, c. G-5; or
 - 3) “public utility” under the *Public Utilities Board Act*, R.S.A. 2000, c. P-45.
- cc) **“Utility Service”** means a service, the terms and conditions of which are regulated by the AUC, and includes services for which an individual rate, joint rate, toll, fare, charge or schedule of them, have been approved by the AUC.

2.2 Interpretation

Headings are for convenience only and shall not affect the interpretation of this Plan. Words importing the singular include the plural and vice versa. A reference to a statute, document or a provision of a document includes an amendment or supplement to, or a replacement of, that statute, document or that provision of that document.

2.3 To Whom this Plan Applies

All directors, officers, employees, consultants, contractors and agents of FortisAlberta are obligated to comply with this Plan and all directors, officers, employees, consultants, contractors and agents of Affiliates of FortisAlberta are obligated to comply with this Plan to the extent that they interact with FortisAlberta.

2.4 Coming into Force

This Plan comes into force on approval by the AUC.

2.5 Amendments to this Plan

This Plan may be reviewed and amended from time to time by the AUC on its own initiative, or pursuant to a request by any party to whom this Plan applies or by any interested party.



2.6 Retained for Numbering Consistency

2.7 Authority of the AUC

Upon approval of this Plan by the AUC, such approval does not detract from, reduce or modify in any way, the powers of the AUC to deny, vary, approve with conditions, or overturn, the terms of any transaction or arrangement between FortisAlberta and one or more Affiliates that may be done in compliance with the Plan. Compliance with this Plan does not eliminate the requirement for specific AUC approvals or filings where required by statute or by AUC decisions, orders or directions.

3 GOVERNANCE AND SEPARATION OF UTILITY BUSINESSES

3.1 Governance

3.1.1 Separate Operations

Policy: FortisAlberta business and affairs will be managed separately from the business and affairs of its Non-Utility Affiliates, except as required to fulfill corporate governance, policy, and strategic direction responsibilities of a corporate group of businesses as a whole.

Compliance Measures

1. The FortisAlberta Compliance Officer will maintain an up-to-date list of the Corporate Governance Group.
2. On an annual basis, the Compliance Officer will provide a formal education session to the Corporate Governance Group. Within 90 days of the end of the previous calendar year, the Corporate Secretary of FortisAlberta will seek and obtain written acknowledgement from all individuals identified as the Corporate Governance Group that they have received the Compliance Training Material, that they are familiar with the requirements of the Code and the Plan, and that (i) as an officer or a member of the FortisAlberta management team, they do not manage the business and affairs of any Non-Utility Affiliate of FortisAlberta, except as required to fulfill corporate governance, policy, and strategic direction responsibilities of the Fortis Inc. group of businesses, or (ii) as a director of FortisAlberta, they do not they do not manage the business and affairs of FortisAlberta except as required in their capacity as a director of FortisAlberta to fulfill corporate governance, policy, and strategic direction responsibilities of FortisAlberta. This acknowledgement will also confirm that the individuals identified as the Corporate Governance Group are familiar with the provisions of the Code (including Section 3.1.5) and the Plan, and have acted in a manner that preserves the form, and the spirit and intent of the Code, and this Plan.



3. The Compliance Plan Committee will review the above acknowledgement within 120 days of the end of the previous calendar year. The minutes of the meeting at which the acknowledgement is reviewed will reflect the results of the review.
4. If any instances of non-compliance with this policy are identified by the Compliance Plan Committee, they will be treated as an inquiry under the Code (see Section 8).

3.1.2 Retained for Numbering Consistency

3.1.3 Separate Management

Policy: FortisAlberta will have a separate management team and separate officers from its Non-Utility Affiliates, but may share management team members or officers with other Affiliated Utilities.

Compliance Measures

1. Prior to amending the make-up of the FortisAlberta management team, or changing the FortisAlberta officers, the President & CEO of FortisAlberta will provide a notice in writing to the FortisAlberta Compliance Officer. If the Compliance Officer does not identify a concern with adherence to this policy within five working days of receiving the notice, the CEO may proceed with the change. If the Compliance Officer does identify a potential concern with adherence to this policy, he will advise the CEO within five working days, and initiate an inquiry under the Code (Section 8).
2. The FortisAlberta Compliance Officer will maintain an up-to-date list of FortisAlberta management team members and officers.
3. At each meeting of the Compliance Plan Committee, the list of FortisAlberta management team members and officers will be compared to the current management team members and officers of FortisAlberta's Non-Utility Affiliates, and the minutes of the meeting will reflect the outcome of this comparison.
4. Any conflicts with this policy identified as a result of this review will be treated as an inquiry under the Code (Section 8).

3.1.4 Retained for Numbering Consistency

3.1.5 Guiding Principle

Policy: No individual shall act as a director, officer, or member of a management team of FortisAlberta and as a director, officer or member of a management team of an Affiliate of FortisAlberta unless the



individual is able to carry out his/her responsibilities in a manner that preserves the form, spirit and intent, of the Code and this Plan.

Compliance Measures

1. The Compliance Officer will maintain an up-to-date list of directors, officers, or members of the management team of FortisAlberta who act as directors, officers, or members of the management team of an Affiliate of FortisAlberta.
2. All such directors, officers, or members of the management team of FortisAlberta who also act as directors, officers, or members of the management team of an Affiliate of FortisAlberta will, on commencement of such dual responsibilities, provide a signed certificate to the Compliance Officer that stipulates that he/she is aware of the provisions of the Section 3.1.5 of the Code, and that he/she will carry out his/her responsibilities in manner which will preserve the form, and the spirit and intent of the Code.
3. Within 90 days of the end of each calendar year, all such directors, officers, or members of the management team of FortisAlberta who also act as directors, officers, or members of the management team of an Affiliate of FortisAlberta will provide a signed certificate to the Compliance Officer that stipulates that he/she carried his/her responsibilities in a manner that preserved the form, and the spirit and the intent of the Code.
4. The Compliance Officer will maintain a record of the above certificates. Any failure to provide a certificate, or the provision of a certificate that does not demonstrate adherence to the Code will be treated as an inquiry under the Code (see Section 8).

3.2 Degree of Separation

3.2.1 Accounting Separation

Policy: FortisAlberta shall maintain separate financial records and books of accounts from all Affiliates.

Compliance Measures

1. The Controller will ensure the accounts and records of FortisAlberta are kept separate from the accounts and records of all Affiliates.
2. The Controller will provide a signed certificate in the form attached as Schedule "B" to this Plan attesting to the accounting separation from all Affiliates and the maintenance of separate financial records and books of accounts, to the Compliance Officer within 30 days of the end of the previous calendar year.



3. The Compliance Officer will maintain a record of the above certificates. Any failure to provide a certificate, or the provision of a certificate, which does not demonstrate adherence to the Code, will be treated as an inquiry under the Code (see Section 8).

3.2.2 Physical Separation

Policy: FortisAlberta shall be located in separate buildings, or shall otherwise be physically separated from all Non-Utility Affiliates through the use of appropriate security-controlled access.

Compliance Measures

1. In situations where FortisAlberta is located in the same building as a Non-Utility Affiliate, FortisAlberta will institute appropriate security controlled access, through the use of receptionists, keyed locks, or card-key access.
2. The Compliance Officer will provide a signed certificate in the form attached as Schedule "B" to this Plan attesting to the physical separation of FortisAlberta from all Non-Utility Affiliates within 30 days of the end of each calendar year.
3. The Compliance Officer will maintain a record of the above certificates. Any failure to provide a certificate, or the provision of a certificate, which does not demonstrate adherence to the Code, will be treated as an inquiry under the Code (see Section 8).

3.2.3 Separation of Information Services

Policy: Where FortisAlberta shares Information Services with an Affiliate all Confidential Information will be protected from unauthorized access by the Affiliate.

Compliance Measures

1. Approval to share Information Services with an Affiliate of FortisAlberta may only be provided in writing by the Vice President, Information Technology and Chief Information Officer of, FortisAlberta. A copy of each approval so issued will be provided to the Compliance Officer who will maintain a record of the above approvals.
2. The Vice President, Information Technology and Chief Information Officer of FortisAlberta will ensure that appropriate data management and data access protocols as well as contractual provisions regarding the breach of any access protocols are in place before approving the sharing of Information Services with an Affiliate of FortisAlberta.



3. The Vice President, Information Technology and Chief Information Officer of FortisAlberta will provide a signed certificate in the form attached as Schedule "B" to this plan attesting to the protection from unauthorized access by Affiliates to shared Information Services, to the Compliance Officer within 30 days of the end of the previous calendar year.
4. The Compliance Officer will maintain a record of the above certificates. Any failure to provide a certificate as described in paragraph 3 above, or the provision of a certificate, which does not demonstrate adherence to the Code, will be treated as an inquiry under the Code (see Section 8).
5. The Compliance Officer will review the access control lists for all Information Services shared with an Affiliate of FortisAlberta and will provide a signed certificate in the form attached as Schedule "B" to this Plan attesting that he has reviewed all Information Services shared with an Affiliate of FortisAlberta and that all access by Affiliates of FortisAlberta to Information Services is in accordance with Section 3.2.3 of the Code.
6. Any failure to provide a certificate as described in paragraph 5 above, or the provision of a certificate which does not demonstrate adherence to the Code, will be treated as an inquiry under the Code (see Section 8).

3.2.4 Financial Transactions with Affiliates

Policy: Any loan, investment, or other financial support provided by FortisAlberta to a Non-Utility Affiliate is to be provided on terms no more favorable than what that Non-Utility would be able to obtain as a stand-alone entity from the capital markets.

Compliance Measures

1. The Controller of FortisAlberta will review all loans, investments, or other financial support provided to a Non-Utility Affiliate to ensure compliance with Section 3.2.4 of the Code and Plan.
2. The Controller will provide a signed certificate in the form attached to this Plan as Schedule "B" attesting that any loans, investments, or other financial support provided to a Non-Utility Affiliate have been provided on terms no more favourable than what the Non-Utility Affiliate would be able to obtain as a stand-alone entity. The certificate will be provided to the Compliance Officer within 90 days of the end of the previous calendar year.
3. The Compliance Officer will maintain a record of the above certificates. Any failure to provide a certificate, or the provision of a certificate, which does not demonstrate adherence to the Code, will be treated as an inquiry under the Code (see Section 8).



3.3 Resource Sharing

3.3.1 Sharing of Employees

Policy: FortisAlberta will share employees with Affiliates on a Cost Recovery Basis if the conditions described in Section 3.3.1 of the Code are met.

Compliance Measures

1. FortisAlberta employees may not be shared with an Affiliate without the written permission of the appropriate Vice President of FortisAlberta, who will provide the signed permission to the FortisAlberta Director Human Resources.
2. The FortisAlberta Director Human Resources will retain the written permission on file, and provide a quarterly report to the Compliance Officer on all instances of sharing FortisAlberta employees with Affiliates which have occurred, or continued during the reporting period. The report will identify if the required Vice President approval was in place before the sharing took place.
3. The Compliance Plan Committee will review the report on sharing FortisAlberta employees on a quarterly basis. The minutes of the meeting at which the report is reviewed will reflect the results of the review, including any recommendations by the Compliance Plan Committee for changes to the manner in which employees are shared with Affiliates.
4. Any recommendations by the Compliance Plan Committee for changes to the manner in which employees are shared with Affiliates will be treated as an inquiry under the Code (see Section 8). Any instances of employees being shared with Affiliates without the signed permission of the appropriate Vice President will be treated as an inquiry under the Code (see Section 8).

3.3.2 Transferring of Employees

Policy: Where an employee is being transferred from FortisAlberta to an Affiliate, the appropriate Vice President will identify whether or not the employee had access to Confidential Information, and if it is determined that the employee did have such access, the Vice President will obtain the necessary confidentiality agreement prior to the transfer of employee.

Compliance Measures

1. The appropriate FortisAlberta Vice President will review all transfers of employees from his/her responsibility to an Affiliate, and identify if the employee had access to Confidential Information while employed with FortisAlberta. If the employee did have access to Confidential Information, the Vice President will



obtain the necessary signed confidentiality agreement prior to the transfer of the employee, and will provide the signed agreement to the FortisAlberta Director Human Resources.

2. The FortisAlberta Director Human Resources will retain the confidentiality agreement on file, and provide a quarterly report to the Compliance Officer on all instances of FortisAlberta employees transferring to Affiliates which have occurred during the reporting period, indicating whether the required signed confidentiality agreement was in place before the transfer took place.
3. The Compliance Plan Committee will review the report on transferring FortisAlberta employees on a quarterly basis. The minutes of the meeting at which the report is reviewed will reflect the results of the review, including any recommendations by the Compliance Plan Committee for changes to the manner in which employees are transferred to Affiliates.
4. Any recommendations by the Compliance Plan Committee for changes to the manner in which employees transfer to Affiliates will be treated as an inquiry under the Code (see Section 8). Any instances of employees with access to Confidential Information being transferred to an Affiliate in the absence of a signed confidentiality agreement will be treated as an inquiry under the Code (see Section 8).

3.3.3 Sharing of Assets

Policy: The plant, assets and equipment of FortisAlberta shall be separated in ownership and separated physically from the plant, assets and equipment of other Non-Utility Affiliates. Utility Affiliates may share ownership and may physically share office space, equipment, rights-of-way and other assets on a Cost Recovery Basis.

Compliance Measures

1. The Controller of FortisAlberta will maintain an inventory of all plant, assets and equipment shared with Affiliates.
2. The Controller will ensure that no plant, assets and equipment are shared with Non-Utility Affiliates.
3. Within the first 90 days of the end of each calendar year, the Controller will provide an annual report to the Compliance Officer of all plant, assets and equipment shared with Utility Affiliates, identifying that methods used to ensure that such sharing is done on a Cost Recovery Basis, the percentage of costs borne by each party and that these percentages were appropriate.
4. The Compliance Plan Committee will review the above report within 120 days of the end of the previous calendar year. The minutes of the meeting at which the



report is reviewed will reflect the results of the review, including any recommendations by the Compliance Plan Committee for changes to the methods used to ensure that plant, assets and equipment are shared with Utility Affiliates on a Cost Recovery Basis.

5. Any recommendations by the Compliance Plan Committee for changes to the methods used to ensure that plant, assets and equipment are shared with Utility Affiliates on a Cost Recovery Basis will be treated as an inquiry under the Code (see Section 8).

3.3.4 Shared Services Permitted

Policy: FortisAlberta may obtain Shared Services from, or provide Shared Services to, an Affiliate where it is prudent to do so, provided that each of FortisAlberta and the Affiliates bear its proportionate share of costs.

Compliance Measures

1. The Compliance Officer will maintain an inventory of all Shared Services obtained from, or provided to an Affiliate.
2. A Services Agreement will document all new or revised Shared Services.
3. Prior to receiving a Shared Service, the Services Agreement, and a business case identifying that it is prudent to obtain the Shared Services will be prepared by the appropriate FortisAlberta employee and presented to the Compliance Plan Committee for review and approval.
4. Prior to providing a Shared Service, the Services Agreement will be prepared by the appropriate FortisAlberta employee and presented to the Compliance Plan Committee for review and approval.
5. At the first meeting of the Compliance Plan Committee following the anniversary date of each Shared Service Services Agreement between FortisAlberta and an Affiliate, the Shared Service will be reviewed. The results of the review will be reflected in the minutes of the meeting. Any Shared Service Services Agreements which no longer meet the test of continued prudence, will be revised or terminated in accordance with the terms of the Services Agreement.

3.3.5 Retained for Numbering Consistency

3.3.6 Occasional Services Permitted

Policy: FortisAlberta may receive, or provide, one-off, infrequent, or Occasional Services to, or from, an Affiliate on a Cost Recovery Basis, documented by way of a work order, purchase order, or similar



instrument, where the Occasional Services are not material as to value, frequency, or use of resources.

Compliance Measures

1. The Compliance Officer will ensure that all Occasional Services provided to, or received by an Affiliate are provided on a Cost Recovery Basis, and are documented by way of an approved work order, purchase order, or similar instrument.
2. Within 90 days of the end of the previous calendar year, the Compliance Officer will provide the necessary report of Occasional Services provided by FortisAlberta to an Affiliate and vice versa, indicating whether the services have been provided on a Cost Recovery Basis, have been properly documented, and remain non-material, required by Section (k) of the Compliance Report, to the Compliance Plan Committee.
3. The Compliance Plan Committee will review the above report within 120 days of the end of the previous calendar year. The minutes of the meeting at which the report is reviewed will reflect the results of the review, including any recommendations by the Compliance Plan Committee for changes to the provision, receipt and documentation of Occasional Services.
4. Any recommendations by the Compliance Plan Committee for changes to the provision, receipt and documentation of Occasional Services, will be treated as an inquiry under the Code (see Section 8).

3.3.7 Emergency Services Permitted

Policy: In the event of an emergency, FortisAlberta may receive, or provide, services and resources to, or from, an Affiliate on a Cost Recovery Basis.

Compliance Measures

1. The Compliance Officer will ensure that all emergency services and resources provided to, or received by an Affiliate in the event of an emergency are provided on a Cost Recovery Basis, and are documented by way of an approved work order, purchase order or similar instrument.
2. Within 90 days of the end of the previous calendar year, the Compliance Officer will provide the necessary report of Emergency Services provided by FortisAlberta to an Affiliate and vice versa, indicating whether the services have been provided on a cost recovery basis, have been properly documented, and remain non-material, required by Section (l) of the Compliance Report, to the Compliance Plan Committee.



3. The Compliance Plan Committee will review the above report within 120 days of the end of the previous calendar year. The minutes of the meeting at which the report is reviewed will reflect the results of the review, including any recommendations by the Compliance Plan Committee for changes to the provision, receipt and documentation of Emergency Services.
4. Any recommendations by the Compliance Plan Committee for changes to the provision, receipt and documentation of Emergency Services, will be treated as an inquiry under the Code (see Section 8).

4 TRANSFER PRICING

4.1 For Profit Affiliate Services

Policy: FortisAlberta may, when it determines it is prudent to do so in operating its Utility business, obtain or provide For Profit Affiliate Services to an Affiliate, subject to the provisions of Sections 4.2 and 4.3 of the Code.

Compliance Measures

1. The Compliance Officer will maintain an inventory of all For Profit Affiliate Services obtained from, or provided to an Affiliate. On a quarterly basis, the Compliance Officer will prepare a report describing all For Profit Affiliate Services obtained from, or provided to an Affiliate and will maintain a record of the above reports.
2. A Services Agreement, duly executed by FortisAlberta employees with the appropriate signing authority, will document all existing, new or revised For Profit Affiliate Services.
3. Prior to implementing a new or revised For Profit Affiliate Service to receive services from an Affiliate, the Services Agreement, and a business case identifying that it is prudent to obtain the For Profit Affiliate Service, will be reviewed and approved by the Compliance Plan Committee. The business case must contain adequate evidence (on a net present value basis appropriate to the life cycle or operating cycle of the services involved) to conclude that the decision to out-source is the lowest cost option for customers, and that the For Profit Affiliate Services have been acquired at a price which is no more than Fair Market Value. Fair Market Value will be determined in a manner consistent with Section 4.5 of the Code.
4. Prior to implementing a new or revised For Profit Affiliate Service to provide services to an Affiliate, the Services Agreement, and a description of the process used to determine that the For Profit Affiliate Service is to be provided at a price which is no less than Fair Market Value, will be reviewed and approved by the



Compliance Plan Committee. Fair Market Value will be determined in a manner consistent with Section 4.5 of the Code.

5. At the first meeting of the Compliance Plan Committee following the anniversary date of each For Profit Affiliate Service Services Agreement between FortisAlberta and an Affiliate, the For Profit Affiliate Service will be reviewed. The results of the review will be reflected in the minutes of the meeting. Any For Profit Affiliate Service which no longer meets the test of continued prudence will be revised or terminated in accordance with the terms of the Service Agreement.
6. Failure to provide a report described in item 1 above will be treated as an inquiry under the Code (see Section 8).

4.2 Pricing For Profit Affiliate Services

4.2.1 Retained for Numbering Consistency

4.2.2 Retained for Numbering Consistency

4.3 Retained for Numbering Consistency

4.4 Asset Transfers

Policy: Assets transferred, mortgaged, leased or otherwise disposed of by FortisAlberta to an Affiliate or by an Affiliate to FortisAlberta will be at Fair Market Value, subject to the provisions of Section 4.6 of the Code.

Compliance Measures

1. The Controller of FortisAlberta will approve any asset transfers, mortgages, leases, or other dispositions by FortisAlberta to an Affiliate, or by an Affiliate to FortisAlberta, and will ensure that such asset transfers are at Fair Market Value, subject to the provisions of Section 4.6 of the Code.
2. Within 90 days of the end of the previous calendar year, the Controller will provide a report to the Compliance Officer detailing any asset transfers between FortisAlberta and Affiliates. The report will describe the manner in which the asset transfers were determined to be at Fair Market Value, subject to the provisions of Section 4.6 of the Code.
3. Within 120 days of the end of the calendar year, the Compliance Plan Committee will review the above report. The minutes of the meeting at which the report is reviewed will reflect the results of the review, including any recommendations by the Compliance Plan Committee for changes to the methods used to ensure that asset transfers are at Fair Market Value, subject to the provisions of Section 4.6 of the Code.



4. Any recommendations by the Compliance Plan Committee for changes to the methods used to ensure that asset transfers between FortisAlberta and Affiliates are priced at Fair Market Value, subject to the provisions of Section 4.6 of the Code, will be treated as an inquiry under the Code (see Section 8).

4.5 Retained for Numbering Consistency

4.6 Asset Transfers Between Utilities for Operational Efficiencies

Policy: FortisAlberta may obtain Operational Efficiencies through the use of common facilities, combined purchasing power or other cost saving procedures by transferring individual assets or groups of assets used in Utility operations between FortisAlberta and Utility Affiliates on a Cost Recovery Basis.

Compliance Measures

1. The appropriate Vice President will approve asset transfers for Operational Efficiencies. The Controller will ensure that the transfer of individual assets or groups of assets used in Utility operations between FortisAlberta and Utility Affiliates will be done on a Cost Recovery Basis.
2. Within 90 days of the end of the previous calendar year, the Controller will provide a report to the Compliance Officer detailing any arrangements for obtaining Operational Efficiencies between FortisAlberta and Utility Affiliates. The report will describe the manner in which the asset transfers were determined to be on a Cost Recovery Basis.
3. Within 120 days of the end of the calendar year, the Compliance Plan Committee will review the above report. The minutes of the meeting at which the report is reviewed will reflect the results of the review, including any recommendations by the Compliance Plan Committee for changes to the methods used to ensure that asset transfers are on a Cost Recovery Basis.
4. Any recommendations by the Compliance Plan Committee for changes to the methods used to ensure that asset transfers between FortisAlberta and Affiliates are valued on a Cost Recovery Basis, or failure to approve the above report will be treated as an inquiry under the Code (see Section 8).

5 EQUAL TREATMENT WITH RESPECT TO UTILITY SERVICES

5.1 Impartial Application of Tariff

Policy: FortisAlberta shall apply and enforce all tariff provisions relating to Utility Services impartially, in the same timeframe, and without preference in relation to its Affiliates and all other customers or prospective customers.



See the Compliance Measures in Section 7.2 of this Plan.

5.2 Equal Access

Policy: FortisAlberta shall not favor any Affiliate with respect to access to information concerning Utility Services or with respect to the obtaining of, or the scheduling of, Utility Services. Requests by an Affiliate or an Affiliate's customers for access to Utility Services shall be processed and provided in the same manner as would be processed or provided for other customers or prospective customers of FortisAlberta.

See the Compliance Measures in Section 7.2 of this Plan.

5.3 No Undue Influence

Policy: FortisAlberta shall not condition or otherwise tie the receipt of Utility Services to a requirement that a customer must also deal with an Affiliate. FortisAlberta shall ensure that its employees do not, explicitly or by implication, suggest that an advantage will accrue to a customer in dealing with FortisAlberta if the customer also deals with an Affiliate of FortisAlberta.

See the Compliance Measures in Section 7.2 of this Plan.

5.4 Affiliate Activities

Policy: FortisAlberta shall take reasonable steps to ensure that an Affiliate does not imply in its marketing material or otherwise, favored treatment or preferential access to Utility Services.

See the Compliance Measures in Section 7.2 of this Plan.

5.5 Name and Logo

Policy: FortisAlberta shall take reasonable steps to ensure that an Affiliate does not use FortisAlberta's name, logo or other distinguishing characteristics in a manner that would mislead consumers as to the distinction or a lack of distinction between FortisAlberta and the Affiliate.

See the Compliance Measures in Section 7.2 of this Plan.



5.6 Retained for Numbering Consistency

6 CONFIDENTIALITY OF INFORMATION

6.1 Utility Information

Policy: Subject to Section 6.2 of the Code, FortisAlberta shall not provide Non-Utility Affiliates with information relating to the planning, operations, finances or strategy of FortisAlberta or of an Affiliated Utility before such information is publicly available.

See the Compliance Measures in Section 7.2 of this Plan.

6.2 Management Exception

Policy: Officers of FortisAlberta who are also officers of an Affiliate as permitted pursuant to Section 3.1.3 of the Code may disclose, subject to the provisions of Section 3.1.5 of the Code, FortisAlberta planning, operational, financial and strategic information to the Affiliate to fulfill their responsibilities with respect to corporate governance, policy and strategic direction of an affiliated group of businesses, but only to the extent necessary and not for any other purpose.

See the Compliance Measures in Section 3.1 of this Plan.

6.3 No Release of Confidential Information

Policy: FortisAlberta shall not release to an Affiliate, Confidential Information relating to a customer or prospective customer, without receiving the prior written consent of the customer or prospective customer, unless such Confidential Information may be disclosed in connection with an inquiry described in Section 6.3 of the Code. Confidential Information to be disclosed in connection with an inquiry described in Section 6.3 of the Code must be approved by the Compliance Officer prior to being released.

Compliance Measures

1. Approval will be obtained from a customer, or prospective customer, in writing, indicating their consent to share Confidential Information relating to the customer or prospective customer with an Affiliate of FortisAlberta before the information is shared, unless such Confidential Information may be disclosed to an Affiliate in connection with a disclosure required under Section 6.3 of the Code.
2. Written consent received from a customer or prospective customer will be provided by management to the Compliance Officer, who will verify that the



information has not yet been shared and will maintain the consent documentation on file as a record of the approval. Management can then release the information.

3. If Confidential Information is to be disclosed to an Affiliate in connection with a disclosure required under Section 6.3 of the Code, the Compliance Officer will verify the circumstances and, if appropriate, will provide an authorization in writing prior to the information being released.
4. Management of FortisAlberta will provide a signed certificate in the form attached as Schedule "B" to this plan attesting that they have not released Confidential Information related to a customer or prospective customer without receiving the prior written consent of the customer or prospective customer, to the Compliance Officer within 30 days of the end of the previous calendar year.
5. The Compliance Officer will maintain a record of the above certificates. Any failure to provide a certificate as described in paragraph 4 above, or the provision of a certificate, which does not demonstrate adherence to the Code, will be treated as an inquiry under the Code (see Section 8).

6.4 Aggregated Confidential Information

Policy: FortisAlberta may disclose Confidential Information when aggregated with the Confidential Information of other customers in such a manner that an individual customer's Confidential Information can not be identified, provided that FortisAlberta shall not disclose such aggregated customer information to an Affiliate prior to making such information publicly available.

Compliance Measures

1. If management of FortisAlberta proposes to disclose aggregated Confidential Information to an Affiliate, the Compliance Officer will verify the aggregated information and, if appropriate, will provide an authorization in writing prior to the information being released. Management can then release the information.
2. The Compliance Officer will verify that the information has not been released to an Affiliate before being released to the public and will maintain a record of the approval on file.
3. Management of FortisAlberta will provide a signed certificate in the form attached as Schedule "B" to this plan attesting that they have not released aggregated Confidential Information to an Affiliate prior to making such information publicly available, to the Compliance Officer within 30 days of the end of the previous calendar year.



4. The Compliance Officer will maintain a record of the above certificates. Any failure to provide a certificate as described in paragraph 3 above, or the provision of a certificate, which does not demonstrate adherence to the Code, will be treated as an inquiry under the Code (see Section 8).

7 COMPLIANCE MEASURES

7.1 Responsibility for Compliance

Policy: FortisAlberta shall be responsible for ensuring compliance with the Code on the part of its directors, employees, consultants, contractors, and agents, and by Affiliates of FortisAlberta.

See the Compliance Measures in Section 7.2 of this Plan.

7.2 Communication of Code and Compliance Plan

Policy: FortisAlberta will communicate the contents of the Code and the Compliance Plan, and any modifications to it from time to time, to each of its directors, officers, employees, consultants, contractors, agents and Affiliates, and make the Code and the Compliance Plan available on FortisAlberta's website.

Compliance Measures

1. Each director, officer, employee, consultant, contractor, agent and Affiliate of FortisAlberta will receive a copy of the Code on commencement of their relationship with FortisAlberta.
2. See the Compliance measures in Section 3.1.1 for the record keeping which will exist for the Corporate Governance Group.
3. For FortisAlberta employees (not included in the Corporate Governance Group), a signed acknowledgement that the employee has received, and is familiar with, the Code and this Compliance Plan will be obtained on the commencement of employment with FortisAlberta. The acknowledgement will be kept in the Human resources personnel file.
4. For FortisAlberta consultants, contractors, and agents, a responsible employee of FortisAlberta will review the work assignment of the consultant, contractor, or agent to determine if the work assignment may be affected by the existence of the Code. If the responsible employee determines that the work assignment of the consultant, contractor, or agent may be affected by the Code, the responsible employee will provide a copy of the Code to the affected party, and will require a written acknowledgement from the consultant, contractor, or agent that they have received a copy of the Code, are familiar with its contents, and will abide by its



requirements. The written acknowledgement will be forwarded to the Compliance Officer for record keeping.

5. The Compliance Officer will provide copies of the Code and this Compliance Plan to all Affiliates of FortisAlberta on an annual basis, addressed to a senior officer of the Affiliate.
6. On an annual basis, within 90 days of the end of the previous calendar year, each FortisAlberta employee will confirm (through written acknowledgement) that they have received the current Compliance Training Material, a current copy of the Code and this Compliance Plan, and are aware of their contents, and agree to abide by their requirements, and have abided by the Code in the pervious year. The written acknowledgements will be maintained in the Human Resources personnel file for each employee.
7. Within 120 days of the end of the previous calendar year, the FortisAlberta Director Human Resources will provide the Compliance Plan Committee a written report, identifying which if any FortisAlberta employees have not acknowledged receipt of a current copy of the Code, awareness of its contents, and agreement to abide by its requirements.
8. The Compliance Officer will post the Code and the Compliance Plan on the FortisAlberta website.

7.3 Retained for Numbering Consistency

7.4 Responsibilities of the Compliance Officer

Policy: The FortisAlberta Compliance Officer will discharge the responsibilities detailed in Section 7.4 of the Code.

Compliance Measures

1. The responsibilities of the Compliance Officer are described in Section 7.4 of the Code as amended from time to time.
2. Within 90 days of the end of the previous calendar year, the Compliance Officer will prepare a report to the Compliance Plan Committee detailing the manner in which he/she has discharged the above responsibilities. The report will be prepared in a manner consistent with Section 7.4 of the Code. The records required to be maintained by the Compliance Officer pursuant to Section 7.4 of the Code will be retained for a period of six years in a manner sufficient to support a third party audit of the state of compliance with the Code.
3. At its next meeting following receipt of the above report, the Compliance Plan Committee will review the report. The results of the review, and any



recommendations by the Compliance Plan Committee for improvements to the manner in which the Compliance Officer discharges the above responsibilities will be detailed in the minutes of the meeting.

4. Any recommendations by the Compliance Plan Committee for changes to the manner in which the Compliance Officer discharges the above responsibilities will be treated as an inquiry under the Code (see Section 8).

7.5 The Compliance Plan

Policy: FortisAlberta will prepare a Compliance Plan, review it at least annually, and update it as necessary.

Compliance Measures

1. A copy of the current FortisAlberta Compliance Plan, indicating the date of its last review, will be filed with the AUC as Section (a) of the annual Compliance Report.

7.6 The Compliance Report

Policy: FortisAlberta will prepare a Compliance Report in accordance with Section 7.6 of the Code, and file it with the AUC within 120 days of the fiscal year end of FortisAlberta. The Compliance Report will be posted on FortisAlberta's website, and interested parties will be advised promptly when the Compliance Report has been posted on the web site.

Compliance Measures

1. The Compliance Report will meet the requirements of Section 7.6 of the Code as amended from time to time.

7.7 Retained for Numbering Consistency

7.8 Retained for Numbering Consistency

8 DISPUTES, COMPLAINTS AND INQUIRIES

8.1 Filing with the Compliance Officer

Policy: The Compliance Officer will keep a record of all written (or e-mailed) disputes, complaints or inquiries from within FortisAlberta or from external parties respecting the application of, or alleged non-compliance with, the Code. The identity of the party making the dispute, complaint, or inquiry will be kept confidential.

Compliance Measures



1. The Compliance Officer will keep the necessary records of disputes, complaints, or inquiries.
2. The Compliance Officer will ensure that appropriate instructions for sending disputes, complaints, or inquiries to the Compliance Officer are posted on the FortisAlberta website.
3. The Compliance Officer will ensure that a description of how the Compliance Officer will investigate disputes, complaints or inquiries (in a manner consistent with the Code) is posted on the FortisAlberta website.

8.2 Processing by Utility

8.2.1 Compliance Officer Acknowledgment

Policy: The Compliance Officer shall acknowledge all disputes, complaints or inquiries in writing (which includes e-mail) within five working days of receipt.

Compliance Measures

See Section 8.1.

8.2.2 Disposition

Policy: The Compliance Officer shall respond to the dispute, complaint or inquiry within 21 working days of its receipt. The response shall include a description of the dispute, complaint or inquiry and the initial response of FortisAlberta to the issues identified in the submission. FortisAlberta's final disposition of the dispute, complaint or inquiry shall be completed as expeditiously as possible in the circumstances, and in any event within 60 days of receipt of the dispute, complaint or inquiry, except where the party making the submission otherwise agrees.

Compliance Measures

See Section 8.1.

8.3 Referral to the AUC

Policy: The Compliance Officer shall ensure that instructions on how to refer disputes to the AUC are contained on the FortisAlberta website.

Compliance Measures

1. Instructions for referring disputes to the AUC will be posted on the FortisAlberta website.



9 Retained for Numbering Consistency

9.1 Retained for Numbering Consistency

9.2 Retained for Numbering Consistency

10 EFFECTIVE DATE OF THE COMPLIANCE PLAN

This Plan comes into effect upon final approval by the AUC.



11 SCHEDULE A – OFFICERS CERTIFICATE

To: The Alberta Energy and Utilities Board

I, _____ of the City of _____, in the Province of Alberta, acting in my position as an officer of FortisAlberta Inc. (FortisAlberta) and not in my personal capacity, to the best of my knowledge do hereby certify as follows:

1. My position with FortisAlberta is _____, and as such I have personal knowledge of, or have conducted due inquiry of individuals who have personal knowledge of, the facts and matters herein stated.
2. Capitalized terms used herein (which are not otherwise defined herein) shall have the meanings ascribed thereto in the FortisAlberta Inter-Affiliate Code of Conduct (the Code).
3. I have read the Code, the Compliance Plan of FortisAlberta dated _____ and the Compliance Report of FortisAlberta dated _____.
4. The form and contents of the Compliance Report comply with the requirements of the Code and the matters reported therein are fully and accurately described.
5. I am not aware of any material non-compliance with the provisions of the Code by any director, officer, employee, consultant, contractor or agent of FortisAlberta, or by any Affiliate of FortisAlberta (including any director, officer, employee, consultant, contractor or agent of the Affiliate) with respect to the any interaction between an Affiliate and FortisAlberta that is not fully and accurately described in the Compliance Report.

Name: _____

Title: _____

Date: _____



12 SCHEDULE B – COMPLIANCE REPORT

To: The FortisAlberta Compliance Officer and the FortisAlberta Compliance Committee

I, _____ of the City of _____, in the Province of Alberta, acting in my position as an officer of FortisAlberta Inc. (FortisAlberta) and not in my personal capacity, to the best of my knowledge do hereby certify as follows:

1. Section _____ of the FortisAlberta Compliance Plan requires me to provide this Compliance Certificate on or before _____.
2. My position with FortisAlberta is _____, and as such I have personal knowledge of, or have conducted due inquiry of individuals who have personal knowledge of, the facts and matters herein stated.
3. For the period of _____ to _____, FortisAlberta has been in compliance with the requirements of Section _____ of the Code, with the exception (if any) of the items described on the attached sheet.

Name: _____

Title: _____

Date: _____



ATCO Group Inter-Affiliate

Code of Conduct

May 22, 2003

ALBERTA ENERGY AND UTILITIES BOARD

Appendix 5

Decision 2003-040: ATCO Group Inter-Affiliate

Code of Conduct

Application No. 1237673

Published by

Alberta Energy and Utilities Board

640 – 5 Avenue SW

Calgary, Alberta

T2P 3G4

Telephone: (403) 297-8311

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Web site: www.eub.gov.ab.ca

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APPENDIX 5

ATCO GROUP INTER-AFFILIATE CODE OF CONDUCT

This ATCO Group Inter-Affiliate Code of Conduct forms Appendix 5 to Decision 2003-040 dated May 22, 2003, being the ATCO Affiliate Transactions and Code of Conduct Proceeding Part B: Code of Conduct.

1 PURPOSE AND OBJECTIVES OF THE CODE

1.1 Purpose and Objectives of the Code

At page 38 of Decision 2003-040, the EUB sets out the purpose and objectives of the Code established by the EUB for the ATCO Group of businesses and the need to respect the spirit and intent behind the Code in the following words:

Purpose of the Code

The purpose of this Code is to establish standards and conditions for interaction between each ATCO Utility and its Utility and [Non-Utility Affiliates](#). This Code attempts to anticipate and adjust for the potential misalignment of interest between shareholders and Utility customers occasioned by Affiliate interactions through the establishment of parameters for transactions, information sharing and the sharing of services and resources, while permitting economies of scale and operating efficiencies.

These parameters are intended to:

- (a) prevent Utilities from cross-subsidizing [Affiliate](#) activities;
- (b) protect confidential customer information collected in the course of providing Utility services;
- (c) ensure Affiliates and their customers do not have preferential access to Utility services; and
- (d) avoid uncompetitive practices between Utilities and their Affiliates, which may be detrimental to the interests of Utility customers.

Objectives of Code

While the overall purpose of the Code is to establish standards and parameters which prohibit inappropriate [Affiliate](#) conduct, preferences or advantages, which may adversely impact the customers of regulated businesses, this purpose reflects several important underlying objectives, including:

- (a) creating a clearly defined set of rules designed to enhance inter-affiliate transparency, fairness and senior management accountability with respect to inter-affiliate interactions impacting regulated businesses;
- (b) providing an environment in which inter-affiliate economies and efficiencies can legitimately occur for the mutual advantage of both a Utility’s customers and its shareholders;
- (c) developing support and respect for the Code by the employees, officers and directors of the ATCO group of companies, which will in turn promote ratepayer confidence in the application of the Code; and
- (d) the creation of regulatory processes and cost efficiencies through the consistent application of a clear set of standards and reporting requirements to Utility inter-affiliate transactions, enhanced by a practical, resolution driven, dispute process.

Respect for the Code

Standards and rules alone, however, will always be insufficient to achieve the objectives of this Code. These objectives can only be fully realized through a demonstrated respect for the spirit and intent behind the words by those individuals to whom the Code applies.

1.2 Application

This [Code](#) is not meant to replace or modify in any manner, any statutory or regulatory requirements relating to Utilities.

2 General Provisions

2.1 Definitions

In this Code the following words and phrases shall have the following meanings:

- a) **“ABCA”** means the *Business Corporations Act*, R.S.A.2000 c. B-9.
- b) **“Affiliate”** means with respect to any Utility:
 - i) an “affiliate” as defined in the ABCA;
 - ii) a unit or division within the Utility or any Body Corporate referred to in clause (b)(i) above;
 - iii) a partnership, joint venture, or Person in which the Utility or any Body Corporate referred to in clause (b)(i) above has a controlling interest or that is otherwise subject to the control of the Utility or such Body Corporate;
 - iv) any partnership, joint venture, or Person deemed by the EUB to be an affiliate of the Utility for the purposes of this Code; and
 - v) an agent or other Person acting on behalf of any Body Corporate, operating division, partnership, joint venture or Person referred to in clauses (b)(i) to (iv) above.
- c) **“Affiliated Party Transactions Summary”** unless otherwise directed by the EUB, means in respect of any period of time, a summary overview of each type of business transaction or

service, other than [Major Transactions](#) or [Utility Services](#), performed by an Affiliate for a Utility or by a Utility for an Affiliate, which summary shall contain a general description of the transactions and services, the parties involved and the approximate aggregate value of each type of transaction or service during the said period.

- d) **“ATCO”** means ATCO Ltd.
- e) **“ATCO Affiliates”** means any entity to which this Code applies pursuant to [section 2.3](#) hereof.
- f) **“Body Corporate”** means a “body corporate” as defined in the ABCA.
- g) **“Code”** means this ATCO Group Inter-Affiliate Code of Conduct.
- h) **“Compliance Officer”** shall have the meaning ascribed thereto in [section 7.3](#) hereof.
- i) **“Compliance Plan”** shall mean the document to be prepared and updated by a Utility pursuant to [section 7.5](#) hereof.
- j) **“Compliance Report”** shall have the meaning ascribed thereto in [section 7.6](#) hereof.
- k) **“Confidential Information”** means any information relating to a specific customer or potential customer of a Utility, which information the Utility has obtained or compiled in the process of providing current or prospective Utility Services and which is not otherwise available to the public.
- l) **“Cost Recovery Basis”** with respect to:
 - i) the use by one [Affiliate](#) of another Affiliate’s personnel, means the fully burdened costs of such personnel for the time period they are used by the Affiliate, including salary, benefits, vacation, materials, disbursements and all applicable overheads;
 - ii) the use by one Affiliate of another Affiliate’s equipment, means an allocated share of capital and operating costs appropriate for the time period utilized by the Affiliate;
 - iii) the use by a Utility of an Affiliate’s services, means the complete costs of providing the service, determined in a manner acceptable to the Utility, acting prudently;
 - iv) the use by an Affiliate of a Utility’s services, means the complete costs of providing the service, determined in a manner acceptable to the Utility, acting prudently; and
 - v) the transfer of equipment, plant inventory, spare parts or similar assets between Utilities, means the net book value of the transferred assets.
- m) **“EUB”** means the Alberta Energy and Utilities Board.
- n) **“Fair Market Value”** means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act.
- o) **“For Profit Affiliate Service”** means any service, provided on a for-profit basis:

- i) by a Utility to a Non-Utility Affiliate, other than a Utility Service; or
 - ii) by a Non-Utility Affiliate to a Utility.
- p) **“Information Services”** means any computer systems, computer services, databases, electronic storage services or electronic communication media utilized by a Utility relating to Utility customers or Utility operations.
- q) **“Major Transaction”** means a transaction or series of related transactions within a calendar year between a Utility and an Affiliate relating to the sale or purchase of an asset(s) or to the provision of a service or a similar group of services, other than [Utility Services](#), which has an aggregate value within that calendar year of \$500,000 or more.
- r) **“Non-Utility Affiliate”** means an Affiliate that is not a [Utility](#).
- s) **“Occasional Services”** shall have the meaning ascribed thereto in [section 3.3.6](#) hereof.
- t) **“Person”** means a “person” as defined in the ABCA.
- u) **“Services Agreement”** means an agreement entered into between a Utility and one or more Affiliates for the provision of [Shared Services](#) or [For Profit Affiliate Services](#) and shall provide for the following matters as appropriate in the circumstances:
- i) the type, quantity and quality of service;
 - ii) pricing, allocation or cost recovery provisions;
 - iii) confidentiality arrangements;
 - iv) the apportionment of risk;
 - v) dispute resolution provisions; and
 - vi) a representation by the Utility and each Affiliate party to the agreement that the agreement complies with the Code.
- v) **“Shared Service”** means any service, other than a [Utility Service](#) or a [For Profit Affiliate Service](#), provided on a [Cost Recovery Basis](#) by a Utility to an Affiliate or by an Affiliate to a Utility.
- w) **“Subsidiary”** shall have the meaning ascribed thereto in section 2(4) of the ABCA.
- x) **“Utility”** means any Body Corporate or any unit or division thereof, that provides a Utility Service and falls within the definition of:
- i) “electric utility” under the *Electric Utilities Act*, S.A. 2003, c. E-5.1;
 - ii) “gas utility” under the *Gas Utilities Act*, R.S.A. 2000, c. G-5; or
 - iii) “public utility” under the *Public Utilities Board Act*, R.S.A. 2000, c. P-45.

- y) **“Utility Service”** means a service, the terms and conditions of which are regulated by the EUB, and includes services for which an individual rate, joint rate, toll, fare, charge or schedule of them, have been approved by the EUB.

2.2 Interpretation

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 statute, document or a provision of a document includes an amendment or supplement to, or a replacement of, that statute, document or that provision of that document.

2.3 To Whom this Code Applies

All **Utilities** directly or indirectly owned, controlled or operated by ATCO are obligated to comply with this Code and all Affiliates of these Utilities are obligated to comply with the Code to the extent they interact with the Utilities.

2.4 Coming into Force

This Code comes into force on September 1, 2003, provided however that, to the extent existing agreements or arrangements are in place between parties to whom this Code applies that do not conform with this Code, such agreements or arrangements must be brought into compliance with this Code on or before October 31, 2003.

2.5 Amendments to this Code

This Code may be reviewed and amended from time to time by the EUB on its own initiative, or pursuant to a request by any party to whom this Code applies or by any interested party.

2.6 Exemptions

A party to whom this Code applies may apply to the EUB for an exemption with respect to compliance with any provision of this Code. Any such application will specify if the requested exemption is in respect of a particular transaction, series of transactions, for a specified period of time, or is for a general exemption from a particular provision.

2.7 Authority of the EUB

Although this Code has been approved by the EUB, such approval does not detract from, reduce or modify in any way, the powers of the EUB to deny, vary, approve with conditions, or overturn, the terms of any transaction or arrangement between a **Utility** and one or more Affiliates that may be done in compliance with this Code. Compliance with the Code does not eliminate the requirement for specific EUB approvals or filings where required by statute or by EUB decisions, orders or directions.

3 GOVERNANCE AND SEPARATION OF UTILITY BUSINESSES

3.1 Governance

3.1.1 Separate Operations

The business and affairs of a [Utility](#) should be managed and conducted separately from the business and affairs of its [Non-Utility Affiliates](#), except as required to fulfill corporate governance, policy, and strategic direction responsibilities of a corporate group of businesses as a whole.

3.1.2 Common Directors

A Utility may have common directors with its Affiliates.

3.1.3 Separate Management

Subject to section 3.1.4 hereof, a Utility must have a separate management team and separate officers from its [Non-Utility Affiliates](#), but may share management team members or officers with other Affiliated [Utilities](#).

3.1.4 Separate Management Exception

Officers of a Utility may also be officers of any Affiliate of which the Utility is a Subsidiary or of any Affiliate that is a Subsidiary of the Utility, as may be required to perform corporate governance, policy and strategic direction responsibilities of an affiliated group of businesses.

3.1.5 Guiding Principle

Notwithstanding sections 3.1.2, 3.1.3 and 3.1.4 hereof, an individual shall not act both as a director, officer or member of a management team of a Utility and as a director, officer or member of a management team of any other Affiliate (thereby acting in a dual capacity) unless the individual is able to carry out his/her responsibilities in a manner that preserves the form, and the spirit and intent, of this Code. In particular, an individual:

- (a) shall not agree to act in a dual capacity if it could reasonably be considered to be detrimental to the interests of customers of the Utility, and
- (b) if acting in a dual capacity, shall abstain from engaging in any activity that could reasonably be considered to be detrimental to the interests of customers of the Utility.

3.2 Degree of Separation

3.2.1 Accounting Separation

A [Utility](#) shall ensure accounting separation from all [Affiliates](#) and shall maintain separate financial records and books of accounts.

3.2.2 Physical Separation

A Utility shall be located in a separate building or shall otherwise be physically separated from all [Non-Utility Affiliates](#) through the use of appropriate security-controlled access.

3.2.3 Separation of Information Services

Where a Utility shares [Information Services](#) with an Affiliate, all [Confidential Information](#) must be protected from unauthorized 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 shall be periodically confirmed by the Utility, through a review that complies with the provisions of the Canadian Institute of Chartered Accountants Handbook and updates thereto.

3.2.4 Financial Transactions with Affiliates

A Utility shall ensure that any loan, investment, or other financial support provided to a [Non-Utility Affiliate](#) is provided on terms no more favorable than what that Non-Utility Affiliate would be able to obtain as a stand-alone entity from the capital markets.

3.3 Resource Sharing

3.3.1 Sharing of Employees

A [Utility](#) may share employees on a [Cost Recovery Basis](#) with an [Affiliate](#) provided that the employees to be shared:

- (a) do not have access to [Confidential Information](#);
- (b) do not routinely participate in making decisions with respect to the provision of [Utility Services](#) or how Utility Services are delivered;
- (c) do not routinely deal with or have direct contact with customers of the [Utility](#); and
- (d) are not, subject to the provisions of section 3.1.4 hereof, routinely involved in operating, planning or managing the business of the Utility.

3.3.2 Transferring of Employees

A Utility may transfer employees to or from an Affiliate, provided any employee transferred by the Utility who had access to [Confidential Information](#) shall execute a confidentiality agreement with respect to such Confidential Information prior to the transfer.

3.3.3 Sharing of Assets

The plant, assets and equipment of a Utility shall be separated in ownership and separated physically from the plant, assets and equipment of other [Non-Utility Affiliates](#). Utility Affiliates may share ownership and may physically share office space, equipment, rights-of-way and other assets on a [Cost Recovery Basis](#).

3.3.4 Shared Services Permitted

Where a Utility determines it is prudent in operating its Utility business to do so, it may obtain [Shared Services](#) from, or provide Shared Services to, an Affiliate. Utilities shall periodically review the prudence of continuing Shared Services arrangements with a view to making any necessary adjustments to ensure that each of the Utilities and its Affiliates bears its proportionate share of costs.

3.3.5 Services Agreement

A Utility shall enter into a [Services Agreement](#) with respect to any [Shared Services](#) it provides to, or acquires from, an Affiliate.

3.3.6 Occasional Services Permitted

Where a Utility has otherwise acted prudently, a Utility may receive, or provide, one-off, infrequent or occasional services (“**Occasional Services**”) to, or from, an Affiliate on a [Cost Recovery Basis](#), documented by way of work order, purchase order or similar instrument. In the event that occasional services become material as to value, frequency or use of resources, the Utility shall enter into a [Services Agreement](#) with the Affiliate for [Shared Services](#).

3.3.7 Emergency Services Permitted

In the event of an emergency, a Utility may share services and resources with an Affiliate without a Services Agreement on a Cost Recovery Basis.

4 TRANSFER PRICING

4.1 For Profit Affiliate Services

Where a Utility determines it is prudent in operating its Utility business to do so, it may obtain [For Profit Affiliate Services](#) from an Affiliate or provide For Profit Affiliate Services to an Affiliate.

If a Utility intends to outsource to an Affiliate a service it presently provides for itself, the Utility shall, in addition to any other analysis it may require to demonstrate the prudence of a For Profit Affiliate Services arrangement, undertake a net present value analysis appropriate to the life cycle or operating cycle of the services involved.

Each Utility shall periodically review the prudence of continuing [For Profit Affiliate Services](#) arrangements.

4.2 Pricing For Profit Affiliate Services

4.2.1 Utility Acquires For Profit Affiliate Service

When a Utility acquires [For Profit Affiliate Services](#) it shall pay no more than the [Fair Market Value](#) of such services. The onus is on the Utility to demonstrate that the For Profit Affiliate Services have been acquired at a price that is no more than the Fair Market Value of such services.

4.2.2 Utility Provides For Profit Affiliate Service

When a Utility provides [For Profit Affiliate Services](#), it shall not charge less than the [Fair Market Value](#) of such services. The onus is on the Utility to demonstrate that the For Profit Affiliate Services have been charged at a price that is not less than the Fair Market Value of such services.

4.3 Services Agreement

A Utility shall enter into a [Services Agreement](#) with respect to any [For Profit Affiliate Services](#) it acquires or provides.

4.4 Asset Transfers

Subject to section 4.6 hereof, assets transferred, mortgaged, leased or otherwise disposed of by a Utility to an Affiliate or by an Affiliate to a Utility shall be at [Fair Market Value](#).

4.5 Determination of Fair Market Value

In demonstrating that Fair Market Value was paid or received pursuant to a [For Profit Affiliate Service](#) arrangement or a transaction contemplated by sections 4.1, 4.2 and 4.4 hereof, the Utility, subject to any prior or contrary direction by the EUB, may utilize any method to determine [Fair Market Value](#) that it believes appropriate in the circumstances. These methods may include, without limitation: competitive tendering, competitive quotes, bench-marking studies, catalogue pricing, replacement cost comparisons or recent market transactions. The Utility shall bear the onus of demonstrating that the methodology or methodologies utilized in determining the Fair Market Value of the subject goods or services was appropriate in the circumstances.

4.6 Asset Transfers Between Utilities for Operational Efficiencies

Where operational efficiencies between Utilities that are Affiliates can be obtained through the use of common facilities (such as shared warehousing or field offices), combined purchasing power or through the use of other cost saving procedures, individual assets or groups of assets used in Utility operations (such as equipment, plant inventory, spare parts or similar assets) may be transferred in the ordinary course of business between [Utilities](#) on a [Cost Recovery Basis](#). All such transactions shall be properly accounted for on the books of the Utilities involved.

5 EQUAL TREATMENT WITH RESPECT TO UTILITY SERVICES

5.1 Impartial Application of Tariff

A Utility shall apply and enforce all tariff provisions relating to [Utility Services](#) impartially, in the same timeframe, and without preference in relation to its Affiliates and all other customers or prospective customers.

5.2 Equal Access

A Utility shall not favor any Affiliate with respect to access to information concerning Utility Services or with respect to the obtaining of, or the scheduling of, [Utility Services](#). Requests by an Affiliate or an Affiliate's customers for access to Utility Services shall be processed and provided in the same manner as would be processed or provided for other customers or prospective customers of the Utility.

5.3 No Undue Influence

A [Utility](#) shall not condition or otherwise tie the receipt of Utility Services to a requirement that a customer must also deal with an Affiliate. Each Utility shall ensure that its employees do not,

explicitly or by implication, suggest that an advantage will accrue to a customer in dealing with the Utility if the customer also deals with an Affiliate of the Utility.

5.4 Affiliate Activities

A Utility shall take reasonable steps to ensure that an Affiliate does not imply in its marketing material or otherwise, favored treatment or preferential access to [Utility Services](#). If the Utility becomes aware of any such inappropriate 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 EUB in writing of such activity and the remedial measures that were undertaken by the Utility.

5.5 Name and Logo

A Utility shall take 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 or a lack of distinction between the Utility and the Affiliate.

5.6 Access to Shared and Occasional Services

A Utility is not required to provide non-Affiliated parties with equal access to [Shared Services](#) or [Occasional Services](#).

6 CONFIDENTIALITY OF INFORMATION

6.1 Utility Information

Subject to section 6.2 hereof, a Utility shall not provide [Non-Utility Affiliates](#) with information relating to the planning, operations, finances or strategy of the Utility or of an Affiliated Utility before such information is publicly available.

6.2 Management Exception

Officers of a Utility who are also officers of an Affiliate as permitted pursuant to [section 3.1.4](#) hereof may disclose, subject to the provisions of [section 3.1.5](#) hereof, Utility planning, operational, financial and strategic information to the Affiliate to fulfill their responsibilities with respect to corporate governance, policy and strategic direction of an affiliated group of businesses, but only to the extent necessary and not for any other purpose.

6.3 No Release of Confidential Information

A Utility shall not release to an Affiliate [Confidential Information](#) relating to a customer or prospective customer, without receiving the prior written consent of the customer or prospective customer, unless such Confidential Information may be disclosed to an Affiliate in connection with a disclosure required:

- (a) for the purpose of a court proceeding or a proceeding before a quasi-judicial body to which the customer is a party;

- (b) for the purpose of complying with a subpoena, warrant, or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;
- (c) to a municipal or provincial police service for the purpose of investigating an offence involving the customer, if the disclosure is not contrary to the express request of the customer;
- (d) by law or by an order of a government or agency having jurisdiction over the Utility; or
- (e) for the purpose of providing [Shared Services](#) or [For Profit Affiliate Services](#) to the Affiliate or for the purpose of receiving Shared Services or For Profit Affiliate Services from the Affiliate; provided appropriate measures are first put in place by the Affiliate to protect the [Confidential Information](#) and the Confidential Information is used by the Affiliate only for the purpose intended by the Utility.

6.4 Aggregated Confidential Information

A Utility may disclose [Confidential Information](#) when aggregated with the Confidential Information of other customers in such a manner that an individual customer's Confidential Information can not be identified, provided that the Utility shall not disclose such aggregated customer information to an Affiliate prior to making such information publicly available.

7 COMPLIANCE MEASURES

7.1 Responsibility for Compliance

Each Utility shall be responsible for ensuring compliance with this Code.

7.2 Communication of Code

Each Utility shall:

- (a) communicate the contents of the Code, and any modifications to it from time to time, to each of its directors, officers, employees, consultants, contractors, agents and Affiliates; and
- (b) make the Code available on the Utility's web site.

7.3 Compliance Officer

Each Utility shall appoint a compliance officer (the "[Compliance Officer](#)"). The same individual may be the Compliance Officer for more than one Utility. The Utility shall ensure that the Compliance Officer is an officer of the Utility and has adequate resources to fulfill his or her responsibilities.

7.4 Responsibilities of the Compliance Officer

The responsibilities of the Compliance Officer shall include:

- (a) providing advice and information to the Utility for the purpose of ensuring compliance with this Code;

- (b) monitoring and documenting compliance with the Code by the Utility, its directors, officers, employees, consultants, contractors and agents;
- (c) monitoring and documenting compliance with the Code by Affiliates of the Utility with respect to the interactions of the Affiliates with the Utility;
- (d) providing for the preparation and updating, of a Compliance Plan for the Utility pursuant to Section 7.5 hereof;
- (e) filing the Compliance Plan and any modifications or replacements with the EUB, posting the Compliance Plan on the Utility's website, and advising interested parties promptly when the Compliance Plan, or any modifications or replacements, have been posted on the website;
- (f) performing an annual review of compliance with the Compliance Plan and preparing an annual compliance report ("**Compliance Report**") containing the information required in section 7.6 hereof. The Compliance Officer shall file the Compliance Report with the EUB within 120 days of the fiscal year end of the Utility with respect to the immediately preceding fiscal year, post the Compliance Report on the Utility's website, and advise interested parties promptly when the Compliance Report has been posted on the website;
- (g) receiving and investigating internal and external disputes, complaints and inquiries with respect to the application of, and alleged non-compliance, with the Code in accordance with Section 8 hereof;
- (g) recommending to the Utility measures required to address events of non-compliance with the Code; and
- (i) maintaining adequate records with respect to all aspects of the Compliance Officer's responsibility.

7.5 The Compliance Plan

Each Utility shall prepare a [Compliance Plan](#). The Compliance Plan shall detail the measures, policies, procedures and monitoring mechanisms that the Utility will employ to ensure its full compliance with the provisions of the Code by the Utility its directors, officers, employees, consultants, contractors and agents, and by Affiliates of the Utility with respect to the interactions of the Affiliates with the Utility. The Utility shall review and update the Compliance Plan at least annually.

7.6 The Compliance Report

The Compliance Report shall include the following information prepared in respect to the period of time covered by the Compliance Report:

- (a) a copy of the Compliance Plan and any amendments thereto;
- (b) a corporate organization chart for the Utility and its Affiliates indicating relationships and ownership percentages;
- (c) a list of all Affiliates with whom the Utility transacted business, including business addresses, a list of the Affiliates' officers and directors, and a description of the Affiliates' business activities;
- (d) a list of all [Services Agreements](#) in effect at any time during such period;

- (e) an overall assessment of compliance with the Code by the Utility, including compliance by the directors, officers, employees, consultants, contractors and agents of the Utility and by Affiliates of the Utility with respect to the interactions of the Affiliates with the Utility;
- (f) an assessment of the effectiveness of the Compliance Plan and any recommendations for modifications thereto;
- (g) in the event of any material non-compliance with the Code, a comprehensive description thereof and an explanation of all steps taken to correct such non-compliance;
- (h) subject to the confidentiality provisions of [section 8.1](#) hereof, a summary of disputes, complaints and inquiry activity during the year;
- (i) a list and detailed description of all [Major Transactions](#) between the Utility and its Affiliates;
- (j) an [Affiliated Party Transactions Summary](#);
- (k) a summary description together with an estimated aggregate value for each [Occasional Service](#) provided by the Utility to an Affiliate and by Affiliates to the Utility;
- (l) a summary list of any exemptions granted to this Code or exceptions utilized, including the exception for emergency services;
- (m) a list of all employee transfers, temporary assignments and secondments between a Utility and its Affiliates, detailing specifics as to purpose, dates and duration of such employee movements; and
- (n) two certificates, each in the form attached as [Schedule “A”](#) attached to this Code, attesting to completeness of the Compliance Report and compliance with the Code, one certificate signed by the Compliance Officer and a second certificate signed by the highest ranking operating officer of the Utility.

7.7 Documents to be Provided to the EUB upon Request

If required by the EUB, a Utility shall provide the EUB with a copy of any document referred to in a Compliance Report or other supporting records and material.

7.8 Compliance Records and Audit

The records required to be maintained by the Compliance Officer pursuant to section 7.4(i) hereof shall be retained for a period of at least six years. Compliance records shall be maintained in a manner sufficient to support a third party audit of the state of compliance with the Code by the Utility, its directors, officers, employees, consultants, contractors and agents, and by Affiliates of the Utility with respect to the interactions of the Affiliates with the Utility. Subject to the confidentiality provisions of section 8.1 hereof, all such records shall be made available for inspection or audit as may be required by the EUB from time to time.

8 DISPUTES, COMPLAINTS AND INQUIRIES

8.1 Filing with the Compliance Officer

Disputes, complaints or inquiries from within the Utility or from external parties respecting the application of, or alleged non-compliance with, the Code shall be submitted in writing to the Compliance Officer and may be made confidentially. The identity of the party making the submission to the Compliance Officer shall be kept confidential by the Compliance Officer unless the party otherwise agrees.

8.2 Processing by Utility

8.2.1 Compliance Officer Acknowledgment

The Compliance Officer shall acknowledge all disputes, complaints or inquiries in writing within five working days of receipt.

8.2.2 Disposition

The Compliance Officer shall respond to the dispute, complaint or inquiry within 21 working days of its receipt. The response shall include a description of the dispute, complaint or inquiry and the initial response of the Utility to the issues identified in the submission. The Utility's final disposition of the dispute, complaint or inquiry shall be completed as expeditiously as possible in the circumstances, and in any event within 60 days of receipt of the dispute, complaint or inquiry, except where the party making the submission otherwise agrees.

8.3 Referral to the EUB

In the event:

- (a) a Utility fails to abide by the process identified in section 8.2 hereof,
- (b) the Utility or a party is unsatisfied with the resolution of a dispute, complaint or inquiry following the conclusion of the section 8.2 process, or
- (c) of an urgent and significant matter, where there is a reasonable expectation that a party's position may be prejudiced by allowing the process contemplated by section 8.2 to operate,

the Utility (subject to the confidentiality provisions of section 8.1 hereof) or a party with a dispute, complaint or inquiry may refer the matter to the EUB for consideration. A referral to the EUB must be in writing and shall describe the dispute, complaint, or inquiry and must include the response, if any, of the Utility to the submission.

9 NON-COMPLIANCE WITH THE CODE

9.1 Non-Compliance

Any non-compliance with the Code by any director, officer, employee, consultant, contractor or agent of a Utility or by an Affiliate (or any director, officer, employee, consultant, contractor or agent of an Affiliate) with respect to the interactions of the Affiliate with the Utility will be considered to be non-compliance by the Utility.

9.2 Consequences for Non-Compliance with Code

Non-compliance with this Code could be considered as *prima facie* evidence in a regulatory proceeding of inappropriate conduct by a Utility or of an inappropriate transaction, expense or activity by the Utility. Non-compliance with the Code by a Utility shall subject the Utility to the full range of powers and authorities of the EUB. Non-compliance with the Code by a director, officer, employee, consultant, contractor or agent of a Utility may subject such individual to disciplinary action by the Utility.



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August 19, 2015

Email: brian.curry@nspower.ca

Brian Curry
Regulatory Counsel
Nova Scotia Power Inc.
PO Box 910
Halifax, NS B3J 2W5

Dear Mr. Curry:

M06268 – Nova Scotia Power Inc. – Affiliate Code of Conduct Paper Proceeding – P-167

This letter is the decision of the Board in the proceeding regarding revisions to the Nova Scotia Power Incorporated ("NSPI") Affiliate Code of Conduct ("Code") and Guidelines.

By Order dated July 18, 2014, the Board established a "paper" process to consider necessary revisions to the Code and Guidelines. This resulted from an extended period of efforts to resolve concerns of stakeholders through additional reporting requirements and changes to NSPI annual Code reporting. A timeline was established to allow creation of an Issues List, the issuing of Information Requests ("IRs"), and submissions from stakeholders and NSPI.

The Intervenor in this matter were the Consumer Advocate ("CA"), the Small Business Advocate ("SBA"), and the Industrial Group, as well as Nova Scotia Power Maritime Link ("NSPML"). The Liberty Consulting Group ("Liberty") acted as Board Counsel consultant.

On September 29, 2014, NSPI filed with the Board responses to IRs from the SBA, Liberty and Board staff. Submissions were received from the SBA (Exhibit N-9), and Liberty filed comments with the Board (Exhibit N-8). The CA filed evidence of its expert, David Vondle (Exhibit N-7).

In response to these submissions, NSPI issued IRs to Liberty and Mr. Vondle. The Industrial Group also issued IRs to Mr. Vondle. Responses to those IRs were filed with the Board prior to NSPI filing its reply submission on November 28, 2014.

In its reply, NSPI stated, after reviewing the background of Code review starting from July 2010:

Rather than continuing to make amendments to the Code and Guidelines, NS Power is proposing that a new Code of Conduct and associated Guidelines be drafted.

The participants and the Board's consultant have identified issues and areas of concern, and NS Power believes it would be more efficient to create a new Code and Guidelines which respond to those issues directly rather than attempting to continue to amend the existing documents.

. . .

To date the Code and Guideline review process has been lengthy and intense. Despite this it appears many of the areas originally in question remain and further revisions to the Code and Guidelines to attempt to address individual concerns risk causing further complexity and confusion to the provisions of the Code and Guidelines.

NS Power submits that the most effective means of developing consensus on the Code and producing a Code and Guidelines which meet the expectations of stakeholders is to work together directly on the documents. NS Power proposes to strike a working group comprised of the stakeholders and consultants (including Liberty) to draft a new Code which would be applicable to NSPML and NS Power as both are utilities regulated by the Board.

NSPI Reply Submission, November 28, 2014

NSPI went on to state it had reviewed this approach with NSPML, the CA and the SBA, and would welcome any other interested party, including the Industrial Group, to participate. NSPI proposed a timetable for this process.

The Board issued a letter on January 8, 2015 in which it stated:

The Code sets out the requirements with which NSPI is to comply in affiliate transactions. The Board is pleased to see that NSPI agrees with stakeholders that the current Code and Guidelines require revisions. The Board also agrees that revisions are required to strengthen the Code. The Board does not agree, however, with NSPI that the most effective approach is to begin anew. The Board believes it has the information before it to make a decision on what changes are required to strengthen the Code of Conduct.

With respect to the changes proposed to the Guidelines, the Board is mindful that the Guidelines are not Board approved but, rather, are NSPI's internal Guidelines. The Board agrees that changes would be required if the Guidelines are to be accepted. As opposed to directing that the Guidelines become Board approved and directing amendments, the Board finds it appropriate to strengthen the current Code so that it responds to identified concerns related to the Guidelines.

The Board will release a revised Affiliate Code of Conduct, developed by Board staff with the assistance of Liberty Consulting, which will incorporate the revisions the Board finds necessary, no later than March 31, 2015. The Board will then invite comments on the revised Code from interested parties and NSPI once it is circulated.

On March 20, 2015, a draft revised Code, prepared by Liberty with input from Board staff, was released to stakeholders for comment. In providing the draft to NSPI and stakeholders, the Board stated in its accompanying letter:

Stakeholders will note that there are a number of recommendations which this version does not incorporate. As the Board has never audited the Affiliate transactions, the Board considers assumptions being made that NSPI is not transacting in line with the intent of the Code to be premature. For that reason, items such as the Cost Allocation Manual ("CAM") and separate legal service company seem unnecessary at the current time. While

the risks identified related to these areas are reasonable concerns, the Board believes imposing such requirements would be more appropriate in response to any audit findings that confirm NSPI is not interpreting or applying the Code in line with the purpose and principles outlined in the Code or does not have sufficient controls in place.

Stakeholders will also note the Board has not responded to a number of items NSPI outlined in its Reply submission. Given these items were first raised in NSPI's Reply submission and were not vetted by stakeholders during this process, Liberty and Board staff have not drafted any changes related to the following:

- The introduction of NSPML and the Maritime Link project has created the need for a joint Code of Conduct which would apply to both regulated entities.
- Issues such as emergency storm response to and by affiliates should be considered in light of the current asymmetrical pricing structure.
- Other Emera affiliates may be subject to their own affiliate Codes of Conduct in their jurisdictions and it is necessary to review their Codes of Conduct and regulatory requirements with a view to determining whether there are issues which need to be aligned and adjusted.

[NSPI Reply Submission, November 28, 2015]

The Board considers each of these topics to be items NSPI should examine and bring recommendations forward to the Board once NSPI has determined what in the current Code is not responding to its concerns. A process is already in place to deal with the Code of Conduct for NSP Maritime Link ("NSPML"). The Board expects NSPI to bring its concerns related to any need for a joint Code, or any other alignment which would be required, in that process.

The Board notes, regardless of how the internal guidelines are written, the Code is paramount to the Guidelines and any concerns of parties related to the interpretation of that Code should be brought to the Board. With that in mind, the Board invites NSPI to develop an introductory statement, similar to the Emera CEO letter and introductory sections in Emera's Standards for Business Conduct, that emphasizes the importance of compliance with the Affiliate Code of Conduct.

Board staff will host a stakeholder session on April 8, 2015 to discuss the proposed changes and ongoing work related to topics the Board has identified.

Therefore, all NSPI and stakeholder comments should be received by the Board no later than April 22, 2015. The Board intends to approve a final version of the Code, after which NSPI will be expected to work with stakeholders to advance guidelines that support the intent of the Code.

The stakeholder session mentioned above was held on April 8, 2015, to consider the proposed Code changes. The Board received final comments from NSPI, the CA, SBA, and Liberty on April 22, 2015. The CA pointed out that NSPI had indicated it would share its proposed edits in an effort to achieve consensus, but that did not occur. As a result, the Board allowed stakeholders to make any comments on areas of consensus by May 7, 2015. Comments were received from the CA and Liberty. NSPI indicated that it could accept some of the comments made by the CA, but not those of others.

The Board considers that many sections of the draft have met with general consensus. With the provisos noted by the Board in its letter of March 20, 2015, the matters on which concerns remain outstanding are:

- Regulation of affiliates;
- Definition of “affiliate”;
- Pricing;
- Affiliate transaction audits.

In instances where specific wording was not agreed, the Board has used language which it considers most appropriately meets the intention of the respective Sections of the Code. The Board has prepared an approved Code version which it finds will ensure that transactions between NSPI and affiliates meet the purposes described in Section 1.1 of the Code. A copy of the approved version is attached, together with a redlined version.

The Board discusses the outstanding concerns noted above, and the reasons for its response to them below.

Regulation of Affiliates

At page 4 of its submissions dated April 22, 2015, NSPI expressed a concern that “...a number of the revisions, as drafted, appear to extend to the regulation of Emera Inc., which is not a public utility subject to the Board’s jurisdiction.” Attached to the submissions, NSPI provided a memorandum from its external counsel, Terence Dalgliesh, Q.C. (as Appendix C).

The Board agrees it does not have the jurisdiction to regulate Emera or any affiliate of NSPI except, at present, NSPML. The Board regulates NSPI in transactions with affiliates, whether NSPI is acquiring goods or services from, or providing them to, an affiliate. Consequently, the Board has removed a number of provisions which might suggest otherwise. In some cases, however, some of the sections pointed out by Mr. Dalgliesh in his communication with NSPI, no additions or revisions had been made, and the Board notes that NSPI did not take exception to them.

Definition of “affiliate”

The current Code definition incorporates the provisions of the Nova Scotia *Companies Act*. The Board understands that similar provisions are common across Canadian jurisdictions. Essentially, this means an affiliate relationship exists where there is more than 50% control.

Liberty had proposed the following definition for Section 1.2:

- 1.2** For the purpose of this Code of Conduct, the term “affiliate” means Emera Incorporated (Emera) and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Emera. Emera and any business entity controlled by it are considered to be affiliates of each other.

[Exhibit N-13, p. 1]

Liberty considers the current definition to be too restrictive and recommended the 10% level. It said, in its comments:

The definition of “affiliate” that NS Power uses is too restrictive. For example, two central purposes of the Code are to ensure against conduct that cross subsidizes affiliates or that makes competitive use of utility or customer information in certain ways. The Code should thus apply to all entities or ventures for which an incentive to undertake inappropriate

conduct may exist. In our experience, that includes many more entities or ventures than the NS Power Code contemplates.

[Exhibit N-8, p. 18]

The SBA, in its letter of April 22, 2015, appears to support the Liberty-proposed definition. The CA suggested a definition which would have included any entity with ownership or control by Emera or any of its subsidiaries and any third party contracting with an affiliate.

NSPI, however, opposed such a definition, saying in its April 22, 2015 submission:

The proposed change to the affiliate definition would move Nova Scotia away from what NS Power understands to be the predominant (if not exclusive) affiliate code definition used across Canada. Imposing such additional requirements on entities with which NS Power owns as little as 10% will greatly discourage those entities from transacting with NS Power to the benefit of customers.

NSPI proposed that the current definition remain unchanged.

The Board has considered the submissions and comments on this issue, and has determined that the following definition would satisfy the concerns identified by Liberty and the CA, while ensuring that customers do not risk achieving the best value in transactions:

- 1.2 For the purpose of this Code of Conduct, the term "affiliate" means:
- a) an "affiliate" in accordance with Sections 2(2), 2(3), and 2(4) of the Nova Scotia Companies Act;
 - b) any business entity deemed by the Board to be an affiliate of the Utility for purposes of this Code.

This is the provision which appears as Section 1.2 of the approved Code. The Board notes that this provision is not unlike the provisions for a number of Alberta utilities referred to by Mr. Dalglish. The Board observes that a "deemed affiliate" could be identified prior to a transaction, and if NSPI has any concerns, it can seek an advance ruling from the Board.

Pricing

Parties identified a number of concerns related to pricing fall under the "FAIR DEALING" section of the Code. The purpose of the provisions is to ensure that there is no discriminatory pricing in non-affiliate transactions, and no subsidization of affiliate transactions. The most significant issue lies with the specific provisions of Section 6.7, which in the draft Code provides:

6.7 Except for Management and Administrative services, whose definition and pricing Code Section 6.11 addresses:

- (a) NS Power will charge prices no less than the greater of its fully allocated costs or fair market value (FMV) for all goods, services, leases, asset transfers, or other exchanges of value (excepting those covered by Code Section 6.5) provided to affiliates.
- (b) NS Power's affiliates will charge NS Power for such goods and services prices no greater than the lesser of their fully allocated costs or FMV. In no case should affiliates charge prices to NS Power that exceed NS Power's self-provisioning costs or the costs that NS Power can secure from other, third-party sources. [Emphasis added]

Exhibit N-13, pp. 4-5

In its April 22, 2015 submission, the CA suggested that in Section 6.7(a), the phrase “no less than”, and in Section 6.7(b), “no greater than” be omitted, and that the phrase “shared support services” be substituted for “Management and Administrative services”. The SBA submitted that a clear definition of the services would be required.

NSPI proposed the following in its Reply Comments related to fair dealing:

...that asymmetrical pricing not apply to Management and Administrative services (formally known as corporate services), direct employee labour charges, fuel and energy transactions and the category of UARB-approved exceptions.

[NSPI Reply Comments, April 22/15 – Section 6.7]

In the comments provided in response to NSPI’s submission of April 22, 2015, the CA stated:

...The Consumer Advocate could accept fair market value (FMV) pricing to NS Power from an affiliate in cases in which there is robust competition for NS Power’s business. This would apply to cases in which NS Power requests proposals or bids openly in the marketplace and receives at least two offers from qualified vendors in addition to a NS Power affiliate. The procurement process should be fully documented including all requests for proposals, proposals, and NS Power’s proposal evaluation process documentation retained for later independent audit by the Board. In cases that do not meet this standard of robust competition in the marketplace, the transactions should be made at the affiliate’s fully allocated cost since the FMV cannot be established through open competition.

[CA Reply Comments, May 7/15],

The Board understands that in the past questions have been raised regarding the adequacy of support that an affiliate transaction has been conducted at Fair Market Value (“FMV”). The provision which the Board has approved requires NSPI to adequately support that it is paying FMV to an affiliate or, if it is unable to do so, to pay the affiliate’s fully allocated costs.

While there may be valid reasons for requiring such exceptions, as well as other exceptions and footnotes which NSPI requested, the Board notes it should be made aware of any such instances. With respect to these exceptions, which were not supported by stakeholders, the Board has not accepted NSPI’S revisions as it appears such changes serve no purpose except to create pricing exceptions.

The ability to bring forward any such circumstances for Board approval has now been provided in Section 6.18. Further, as noted above, revisions made to this section of the Code have responded to NSPI’s concerns that under asymmetrical pricing affiliates have no incentive to interact with NSPI. The changes made are in line with recommendations of the CA, where asymmetrical pricing is required only when sufficient evidence of fair market value is not available.

One item of concern is the changes proposed to Section 6.12, indicating there is an inconsistency in the current Code for labour transactions occurring between NSPI and NSPML. NSPML was a participant in this matter; however, it did not provide any comments or evidence throughout the proceeding regarding those issues. The Board has already indicated in its letter of March 20, 2015, that it will consider revisions with respect to NSPML when NSPML applies for revisions to its Code of Conduct.

Affiliate transaction audits

Over the period of the review of the Code and Guidelines, stakeholders have expressed the view that an affiliate transaction audit is necessary. The CA, in particular, had, through Mr. Vondle's evidence and in its submissions, sought changes with respect to a Cost Allocation Manual or a separate service provider entity. The Board stated in its March 20, 2015 letter that it did not consider either of these necessary currently. As a result, stakeholders have urged the Board to ensure such an audit occurs within a reasonable period of time.

The Board notes some of the wording provided by NSPI in Section 7.2 related to auditing of NSPI's affiliate activity creates rules restricting internal and external audit functions. This is not in accord with what the Board considers to be the intent of an audit; therefore, the wording has been amended to eliminate such restrictions. The scope and timing of external audits will be as the Board determines to be appropriate.

With respect to audits of affiliate transactions, as outlined in the Board's letter of March 20, 2015, the Board will proceed with an audit. This will be advanced in 2016, after the new Code has been in place for one year. In the meantime, the Board has requested staff investigate further the numerous exceptions highlighted during this process as well as concerns related to compliance with the Code for 2014. The Board will provide stakeholders with an opportunity to raise any continued concerns they may have with current transactions and future external audits.

Conclusion

The Board has approved a new Affiliate Code of Conduct for NSPI which is attached to this letter. It replaces the current Code and will be effective as of October 1, 2015. An Order will issue accordingly.

The Board appreciates the work undertaken by all parties to develop the new Code; the process has been long and challenging at times; however, the Board considers that all concerned have focused on ensuring that customers benefit from having appropriate provisions in place.

The Board expects NSPI to work with stakeholders to advance Guidelines, which are internal documents that do not receive Board approval, to amend or replace or affirm Guidelines that support the intent of the Code.

Yours very truly,



Roberta J. Clarke, Q.C.
Member

cc: Tim Wood, NSPI, Acting Director, Regulatory Affairs
David Landrigan, NSPI, General Manager, Legal and Regulatory Affairs
M06268 Interested Parties



Nova Scotia Power Inc. (NS Power) 2015 CODE of CONDUCT governing Affiliate Transactions

Statement from the President and CEO:

The Affiliate Code of Conduct governs the conduct of NS Power as it relates to its business dealings with its affiliates. NS Power endorses and respects the spirit and intent behind the Code and adopts it in full as the standard against which its transactions with affiliates will be assessed.

NS Power executives and senior management expect all employees to comply fully with all provisions of the NS Power Affiliate Code of Conduct.

1.0 PURPOSE

1.1 The purpose of this Code of Conduct is to ensure that: (i) NS Power does not cross subsidize and NS Power's customers do not bear any risks or losses because of its affiliates, (ii) NS Power's organization and management is focused on utility operations, (iii) customer information maintained by NS Power is protected in transactions with affiliates, (iv) NS Power's financial records and other financial information are separate from those of its affiliates, and (v) NS Power complies with the Code of Conduct with a sufficient level of transparency.

1.2 For the purpose of this Code of Conduct, the term "affiliate" means:

- a) an "affiliate" in accordance with Sections 2(2), 2(3), and 2(4) of the Nova Scotia Companies Act; or
- b) any business entity deemed by the Board to be an affiliate of the Utility for purposes of this Code.

2.0 STATEMENT OF PRINCIPLES

2.1 NS Power will precede any transaction by which it acquires from or provides to an affiliate any goods, services, leases, asset transfers, or other exchanges of value, with a sound, objective, and transparent process and reasonable documentation;

- (a) The process and documentation shall identify and then compare transacting with an affiliate to: (i) provisioning through other, reasonably available commercial alternatives, (ii) self-provisioning by NS Power, (iii) joint NS Power/third-party provisioning, (iv) joint NS Power/affiliate provisioning, and (v) such other arrangements as may be reasonably available under the applicable circumstances at the time of the decision.
- (b) For transactions below \$125,000 in aggregate value (determined by adding together all similar transactions with the same affiliate during any consecutive 12-month period), the comparison of alternatives and documentation may be abbreviated as appropriate to avoid adding materially to the cost of the transaction, provided that NS Power provides sufficient documentation to demonstrate that the transaction complies with the standards of Section 1.1 of this Code and that NS Power's actions to meet those standards preceded the decision to transact with an affiliate.

2.2 NS Power will only enter into affiliate transactions when doing so has been demonstrated through sound, documented analysis to be the best available option for NS Power's customers at the time.

2.3 NS Power's customers will not otherwise bear the risks or share the rewards of an affiliate's activities.

3.0 CORPORATE STRUCTURE

Objectives

To separate regulated electric and other utility services¹ from affiliate activities.

Protocols

3.1 Emera, the parent company of NS Power, will create and maintain a corporate organizational structure which ensures that regulated electric and other utility services are provided solely by NS Power and by no other affiliate.

3.2 NS Power will maintain a complete list of all of its affiliates. The list will include the name and address of each affiliate, a brief description of its activities and the names, addresses and telephone numbers of all of its officers. The list will be kept on open file with the Nova Scotia Utility and Review Board (Board).

4.0 UTILITY MANAGEMENT

Objectives

To dedicate to the provision of regulated services, in terms of quality and numbers, a management team capable of maintaining a superior level of performance, at the same time as NS Power affiliates are expanding into other business activities.

Protocols

4.1 NS Power will maintain within the utility a management team capable of delivering a superior level of performance.

4.2 NS Power will prepare and include in the annual report submitted to the Board, as specified in Code Section 7.1, a summary of utility performance.

5.0 UTILITY FINANCING

Objectives

To maintain a capital structure for NS Power which is in accordance with applicable Board decisions.

Protocols

¹ Regulated electric and other utility services are those covered by the Public Utilities Act

- 5.1** NS Power's capital structure will reflect the Board approved capital structure.
- 5.2** NS Power's capital structure will not be used to subsidize affiliate activities. Affiliate risks or losses will not be borne by NS Power's customers. NS Power shall, unless otherwise approved by the Board: (i) enact bankruptcy resistant covenants that protect the utility in the event of a parent company bankruptcy; (ii) cause all credit facility, debt and preferred stock financings to be solicited, negotiated and acquired independently by NS Power; and (iii) not agree to borrowings of Emera or its affiliates to have recourse to NS Power or permit cross defaults or a cross-default event whereby NS Power will be in default of its borrowings due to the actions of Emera or its affiliates.
- 5.3** NS Power shall not, without the prior approval of the Board: (i) provide loans to, guarantee the indebtedness of, or invest in securities of an affiliate; (ii) enter into any type of money pool arrangement that includes non-utility affiliates; or (iii) pledge financial support or cash flow for the benefit of an affiliate. NS Power shall, unless the Board authorizes otherwise: (i) maintain standalone credit ratings; (ii) keep cash management systems separate from its affiliates; and (iii) make reasonable efforts to settle all inter-affiliate receivables and collectibles monthly.
- 5.4** NS Power's formation of partnerships with affiliates shall not in any way allow avoidance of the restrictions on NS Power's financial assistance or support.

6.0 FAIR DEALING

Objectives

To avoid discrimination in the matter of pricing or in any other manner against non-affiliated buyers of regulated electric utility services.

To avoid subsidy by NS Power of the costs, revenues, or activities of affiliates.

Protocols

- 6.1** NS Power will provide access to regulated utility services on a non-discriminatory basis and will not in respect of those utility services, directly or indirectly provide, state, imply or offer any preference or favored treatment to NS Power's affiliates or persons purchasing affiliate goods and services.
- 6.2** The financial records of NS Power, as well as NS Power's information systems, will be kept separate from those of its affiliates. All systems containing such records shall include sufficient protections to preclude access by non-NS Power employees to NS Power information. The administrator of such systems shall regularly test those protections and attest to their effectiveness.
- 6.3** NS Power will not provide confidential customer information to affiliates or other persons without prior customer consent.
- 6.4** NS Power will make its customer information available to all parties on terms no less favorable than those that NS Power has offered or provided to any affiliates.

- 6.5** NS Power will charge Board approved rates for all regulated electric and other utility services provided to affiliates. When NS Power is the receiver of tariff services, NS Power will pay the appropriate tariff.
- 6.6** NS Power will charge market rates for any assistance it provides to affiliates and pay market rates for any assistance it receives from affiliates by way of a guarantee or loan. In no case shall the costs for financial assistance provided by affiliates to NS Power exceed NS Power's standalone costs. NS Power will not engage in support agreements or similar undertakings with affiliates that can commit resources effectively provided by NS Power, except on the same terms and conditions NS Power would require from others.
- 6.7** Except where pricing is otherwise specified in this Code or an exception has been explicitly obtained in accordance with Section 6.18:
- (a) NS Power will charge prices no less than the greater of its fully allocated costs or fair market value (FMV) for all goods, services, leases, asset transfers, or other exchanges of value (excepting those otherwise covered by this Code) provided to affiliates.
 - (b) NS Power shall not pay affiliates for such goods and services prices greater than FMV. Where FMV cannot be evidenced, by a minimum of two alternative qualified vendor offers, NS Power shall pay no more than the affiliates' fully allocated costs. In no case should NS Power pay any amount that exceeds NS Power's self-provisioning costs or the costs that NS Power can secure from other, third-party sources.
- 6.8** NS Power shall determine and document all FMV prices through the use, where practicable, of competitive tendering or quotes; otherwise NS Power shall use the most direct alternative means of establishing FMV pricing, including without limitation benchmarking studies, catalog pricing or recent market transactions.
- 6.9** Where prices based on FMV cannot be determined through reasonably direct and substantially supported means, NS Power will document the inability to make such determination, and will charge to its affiliates prices that reflect the utility's fully-allocated costs for the goods and services provided and vice versa.
- 6.10** Where a capital asset is transferred from NS Power to an affiliate or from an affiliate to NS Power, that asset will be transferred at a price to be approved by the Board in advance.
- 6.11** The price for Management and Administrative services between NS Power and affiliates will equal the providing party's fully allocated costs. Management and Administrative services consist of corporate support services in the areas of Internal Audit & Corporate Security, Corporate Secretary and Insurance, Security, Environmental Policy & Programs, Corporate Tax, Controllers, Treasury, Investor Services, Pension Administration, Human Resources and Strategic Human Resources, Safety and Corporate overhead.
- 6.12** The determination of the cost of personnel providing any service shall be based on a positive time reporting that incorporates an explicit, appropriate designation of the beneficiary or group of beneficiaries of the services provided in each pay period. All costs should be directly charged to the clients of the services wherever possible. When direct charging is not possible, costs should next be allocated wherever possible using allocation factors based on cost drivers specifically applicable to the service provided. Only when no other reasonable alternative exists should costs be allocated using general allocation factors not

directly related to the services provided. Where budgets or estimates of such costs are used as an initial pricing basis, they must in all cases eventually be reconciled to actual time and other resources used.

- 6.13** NS Power shall make no changes in responsibility for the performance of any services regularly provided for or by any affiliate (including but not limited to corporate support services), absent a prior analysis demonstrating that such change is the best available option for NS Power customers.
- 6.14** NS Power shall take appropriate measures to prevent all confidential or commercially sensitive information received from Nalcor, including but not limited to its 24 month forecast received from Nalcor Energy, from being shared with any of NS Power's affiliates.
- 6.15** NS Power shall maintain complete and detailed documentation of its procedures for accounting for and charging, assigning, and allocating the prices and costs of inter-affiliate transactions, including but not limited to: (i) a listing of each type of cost which is allocated or directly charged between entities and the factor(s) which is (are) used in the allocation; (ii) an explanation of the bases for and calculation of each cost allocation factor used for transactions between and among corporate entities; (iii) a listing of the total amount of each cost allocated or directly charged between or among corporate entities during the annual period; (iv) a description of the detailed procedures used for identifying and assigning costs between affiliates; (v) a description of the control procedures for ensuring proper inter-affiliate cost assignment, including organizational responsibilities and accountabilities and review procedures; and (vi) detailed procedures for determining FMV.
- 6.16** All regularly recurring services that NS Power provides to its affiliates or one of its affiliates provides to NS Power shall be subject to an annual budget to which both the service providers and recipients must concur in documents reflecting such agreement. Variances to such budgets will be tracked.
- 6.17** NS Power energy and fuel transactions with affiliates will be included in the annual Code of Conduct Report and will continue to be examined in the Fuel Adjustment Mechanism Audits.
- 6.18** With the approval of the UARB, NS Power may use a pricing protocol other than those described above.

7.0 DEMONSTRATING CODE COMPLIANCE

Objectives

To separately and fully account for the value of goods, services, financial and other support delivered to or from NS Power and its affiliates.

Protocols

7.1 NS Power shall report annually to the Board the following information:

- (a) A detailed listing of all assets, services and products provided to and from NS Power and each of its affiliated companies.

- (b) Each item on the listing should indicate the price received or paid and, as appropriate, the relevant fully allocated costs or market values, along with notes providing full explanatory detail.
- (c) Where fair market value is used, an explanation should be provided as to how the value was determined, including the comparative source for the value.
- (d) Where cost allocations are involved, a description of the cost allocators and methods used to make the allocations should be included.
- (e) A summary of corporate services and the methodology for ensuring fair allocations of these costs.
- (f) A summary of utility performance providing results under all established utility performance measurements for at least the last three years and detailed definition and explanation of each performance measurement. Other aspects of the utility performance report format, and contents thereof, shall be agreed upon in advance between NS Power and the Board.
- (g) A copy of the latest version of the documentation of inter-affiliate costing pricing procedures required in Code 6.15.
- (h) A list of the number of employees transferred between NS Power and its affiliates during the year by level and job function.
- (i) A list of corporate entities in which NS Power's parent company has any amount of ownership. For those entities that are affiliates, as understood by this Code, the list will include the name and address of each affiliate, a brief description of its activities and the names, addresses and telephone numbers of all of its officers.
- (j) The most recent version of the NS Power's internal Guidelines for implementing this Code of Conduct, as specified in Section 7.11.

7.2 NS Power shall be subject to external audits of affiliate transactions and transfers of employees between NS Power and its affiliates from time to time as the Board determines to be appropriate. The auditor shall be subject to approval by the Board. Understanding that internal control remains an important measure, NS Power shall conduct an internal audit program encompassing an appropriate level of testing affiliate transactions on an annual basis, except in years subject to an external audit by the UARB. Compliance with Internal Audit requirements will be confirmed through a certificate of compliance from NS Power in accordance with Section 8.1.

7.3 All newly entered, renewed, extended, or otherwise altered or amended NS Power agreements with an affiliate (excepting those energy transactions addressed by the agreement between NS Power and Board Counsel as recorded in 2007 NSUARB 174, at para. 42) will contain provisions sufficient to require and assure that the affiliate will make available all of its books and records (notwithstanding any agreement the affiliate has with any third party) as may in the judgement of the Board be necessary to: (a) examine the market competitiveness of the terms and conditions of such affiliate agreement with reference to any similar agreements the affiliate has with third parties, or (b) verify that agreements between the affiliate and NS Power are independent of and in no way linked to

agreements between the affiliate and third parties in a manner that causes financial or other harm or loss to NS Power. Moreover, if executed by NS Power no such commitment shall be considered binding, or effective in the absence of such provisions.

- 7.4** NS Power shall submit to the Board annually, all internal Code of Conduct implementation guidance along with a summary of significant interpretations or judgements made by NS Power related to the Code during the year.
- 7.5** In order to monitor compliance, the Board at any time may review the records of NS Power and the records of NS Power affiliates as the Board deems required in assuring compliance with any provisions of this Code and with the duty to deal at arm's-length with affiliates.
- 7.6** NS Power will take the following actions to establish that each transaction with an affiliate is demonstrably the best option from among those reasonably available at the time for its customers.
- (a) Where NS Power decides to transact with an affiliate, it shall document, contemporaneously with the time of the decision, efforts undertaken to identify commercially available alternatives, the alternatives identified, and a description of the basis for its decision to transact with an affiliate.
 - (b) This documentation shall contain a summary table or narrative that identifies all alternatives considered, lists each criterion considered material in deciding with whom to transact, compares each alternative under each such criterion, and explains the reasons for selecting an affiliate.
 - (c) NS Power's documentation shall contain summaries of all verbal communications substantially affecting its decision to transact with an affiliate, which summaries shall be prepared by an identified NS Power participant as soon as practicable following such communication.
 - (d) The documentation required to be maintained regarding affiliate transactions shall be prepared by or under the direction of an NS Power manager responsible for the costs that the transaction will cause NS Power to incur, and shall be accompanied, in all cases where transactions individually or in aggregate over any consecutive 12-month period exceed \$125,000, by an NS Power officer's level signifying the officer's review and approval of transaction decisions made and the sufficiency of the data gathering and analysis underlying them.
 - (e) To the extent that emergency circumstances require the waiver or delay in performing or documenting any normal step in the data gathering, analysis, and decision process, those circumstances shall be described in a document that shall be accompanied by a responsible NS Power officer's signature signifying the officer's verification that conditions were sufficient to warrant the suspension of normal steps or delay in documenting them.
- 7.7** Additional requirements shall apply to all "Large Transactions" with affiliates, which consist of those that meet the following criteria:
- (a) One-time transactions with a value of \$500,000 or more;

- (b) Periodic, related transactions reasonably expected to reach in aggregate \$750,000 or more in any consecutive 12-month period;
- (c) Transactions with: (a) a duration of 24 months or greater, taken alone or in combination with related transactions, and (b) with a value of \$250,000 or more.
- (d) Loans or assignments of personnel between NS Power and an affiliate and involving work in more than 6 months of any consecutive 12-month period, or where costs of all employees involved in related activities or projects are reasonably expected to exceed \$500,000.

7.8 NS Power shall for Large Transactions:

- (a) Prepare an analysis of the costs of self-provisioning by NS Power, which shall specifically identify and exclude fixed NS Power costs (*i.e.*, those that NS Power will continue to bear during the term of the agreement).
- (b) Prepare a description of any solicitations of terms and conditions from third-party suppliers.
- (c) Prepare a documented analysis that: (i) identifies the potential third-party suppliers from whom interest was solicited, (ii) the identities of any of them disqualified from submitting offers, (iii) the reasons for such disqualification, (iv) the number and identity of offers received, (v) a list of all criteria used to evaluate the transaction and a description of the relative importance applied to each such criterion, (vi) a ranking of each bid received by cost and by each criterion considered, and (vii) a justification of the decision that addresses the significance of each decision criterion identified as relevant.

7.9 In the event that solicitation of third-party offers is not used for a Large Transaction, NS Power shall prepare a description of: (a) the justification for failing to use such solicitations, (b) a description of alternate means used to identify available commercial alternatives, (c) the criteria used to evaluate and compare those alternatives, and (d) a description of the process and reasons for choosing to transact with an affiliate.

7.10 In the event that NS Power contracts with an affiliate acting in concert with a third-party (whether by partnership, joint venture, or otherwise), NS Power shall document its efforts to consider the propriety, possibility, advantages, and disadvantages of NS Power's working similarly with a third-party as an alternative.

7.11 Proper implementation of this Code of Conduct requires detailed internal Guidelines. NS Power shall prepare, maintain, and review and update at least annually Code of Conduct Guidelines that fully comply with the Code's current provisions and that provide employees with guidance appropriate to ensuring its full, timely, and proper implementation and compliance. The Guidelines shall be organized in the same numbering scheme as the Code, that is, guidelines for each Code provision.

8.0 EMPLOYEE COMPLIANCE

Objectives

To ensure understanding of and compliance with this Code of Conduct.

Protocols

- 8.1** NS Power will ensure that its employees who perform work for affiliates understand and agree to abide by this Code of Conduct. NS Power will inform all its managers and employees directly involved in affiliate activities of their expected behavior relative to the Code of Conduct and will undertake annual training in Code content and use. NS Power will require annual certifications by all employees having engagement in affiliate transactions and their pricing and documentation that such employees understand and have complied with the requirements of the Code of Conduct and Guidelines. NS Power shall also undertake management reviews of compliance sufficient to enable the President of NS Power to certify to the Board annually in writing that all affected employees have complied with this requirement to the best of their knowledge, information, and belief.

9.0 GENERAL

- 9.1** All reports referred to in this document shall be provided by April 30 in respect of each preceding year.
- 9.2** This Code of Conduct replaces the Code of Conduct dated February 24, 2009 (effective June 1, 2009), and shall become effective on October 1, 2015.