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June 30, 2004

Mr. Peter O'Dell
Acting Board Secretary
Ontario Energy Board
2300 Yonge Street
Toronto, Ontario
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Dear sirs;

Re: Affiliate Relations Code

Submission to the Ontario Energy Board

The Heating, Ventilation and Airconditioning Coalition Inc. ("HVAC") was formed 10 years ago to assist independent contractors working in the HVAC industry in addressing concerns about the way in which their industry interacted with monopoly utilities. As both natural gas utilities previously had appliance sales and service businesses, there were ongoing significant causes for concern which led to interventions in rate cases. Initially, our concern centred on the utilities' internal cost allocation processes, which allowed for significant cross-subsidisation of these "ancillary" businesses by ratepayers. After the utilities "unbundled" their HVAC businesses along with their commodity retail functions, the Coalition's concern shifted to the creation and enforcement of an appropriate Affiliate Relations Code to govern the relationship between the regulated monopoly utility and non-regulated affiliates operating in competitive markets.

In the last few years, both regulated gas monopolies have divested themselves of their appliance sales and services businesses, as well as affiliated commodity services at the retail level. Union Gas accomplished this through the sale of its various business units after having separated the businesses corporately, and ceasing to use the utility bill to bill and collect for these services. Enbridge, however, has taken the position that the utility bill is not the property of the regulated entity, and therefore Enbridge Inc., the parent company, could do whatever it liked with regard to sharing that bill. Enbridge Inc., as part of its sale of the appliance and service business to Centrica PLC, granted exclusive access to the utility bill for the marketing, billing and collecting of appliances and services to Centrica for an undisclosed term, creating a virtual unregulated affiliate out of a relationship that had previously been regulated. HVAC has raised concerns about this in a number of forums, most recently in RP 2003-0133, but has been told that matters relating to competition are not within the purview of the OEB. Subsequent to that hearing, the Ontario Energy Board Act has been amended to include section 2.1, which now provides the OEB with the mandate to "To facilitate competition in the sale of gas to users." HVAC contends that that change in focus enables the OEB to address the deficiencies in the Affiliate Relations Code which have led to the creation of this "virtual affiliate", and will allow for the OEB to remediate the situation.

The suggested amendments to the Affiliate Relations Code do not address this remediation and seem to be taking a significant step back from the main focus of the Affiliate Relations Code, which was to ensure that access to monopoly services was non-preferential, and that the pricing of access was uniform. Now the focus of the current suggested amendments appears to be on identifying pricing issues as between affiliates, which does not address the challenges associated with the historical concern relating to non-preferential access to monopoly services. The specific deficiencies in the current draft and suggested

changes are:

1. The Affiliate Relations Code does not identify monopoly services specifically, and therefore does not apply to any entity, whether affiliate or not, who might be contracted by a regulated entity to provide these services.
2. The Affiliate Relations Code does not have a general proscription on preferential access to monopoly services in the operational sections, although it is a stated objective of the Code under section 1.1(c) ; that proscription only applies to affiliates in the operative sections of 2.5 of the Code. This has led to the interpretation that preferential access can be bought, such as in the billing relationship, provided it is not bought or received by an affiliate.

HVAC suggests that in addressing these concerns, that the Board consider the following suggested areas of amendment to the Affiliate Relations Code ("ARC"):

- A. Broaden the language of Section 2.5 of the ARC to remove the word affiliate where it appears, and replace that with language which prohibits preferential access to any single company. The list of services should include a list of monopoly services, including the utility bill. HVAC notes that the Board is very clear in current electricity proceedings before it that the Customer Information Systems of an electricity Local Distribution Company are clearly regulatory assets of that entity.
- B. Include in the definitional sections of the ARC a definition of monopoly services, including billing and collection services.
- C. Include a general proscription against regulated entities contracting for the performance of monopoly services in a fashion that might undermine regulatory oversight for the performance of those services, both as they relate to the costing disclosure of those services, and the access to those services.

HVAC has included with this submission as Appendix "A" an extract from the argument on Issues Day in the Enbridge Gas Distribution Inc's 2003 rate case which discuss in more detail the historical evolution of this issue, and the regulatory gaps in terms of existing processes. In that particular case, the Board chose not to accept the determination of the issue with in the context of that rate case.

HVAC believes that the key to the integrity of the Affiliate Relations Code is the control of regulatory oversight with respect to the visibility, access to and cost of monopoly and regulated services which might be performed by or on behalf of regulated industries. HVAC generally supports the changes proposed to the ARC put forward by the Board, but believes that the focus of the Code's intent might be lost without paying due care and attention to the substance of the suggested focus on where and how monopoly services are performed. HVAC appreciates the opportunity to have provided these comments.

All of which is respectfully submitted,

Yours truly,

Brian Dingwall