Aiken & Associates
578 McNaughton Ave. West
Chatham, Ontario, N7L 4J6

Phone: (519) 351-8624
Fax: (519) 351-4331
E-mail: raiken@xcelco.on.ca

September 15, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

Re: EB-2010-0248 – Notice of Proposal to Amend Rules – Proposed Amendments to the Affiliate Relationships Code for Gas Utilities and Proposed Amendments to the Natural gas Reporting & Record Keeping Requirements: Rule for Gas Utilities – Comments of London Property Management Association

By way of a letter to interested parties dated July 29, 2010, the Ontario Energy Board ("Board") gave notice under Section 45 of the *Ontario Energy Board Act, 1998* ("Act") of proposed amendments to the Affiliate Relationships Code for Gas Utilities ("ARC") and the Natural Gas Reporting & Record Keeping Requirements: Rule for Gas Utilities ("RRR").

These are the comments of the London Property Management Association ("LPMA") provided in response to the proposed amendments included in the Board letter. LPMA generally agrees with the proposals as outlined in the Notice of Proposal to Amend Codes.

1. Background

The activities of Union Gas Limited ("Union") and of Enbridge Gas Distribution Inc. ("Enbridge") have been governed in part by certain undertakings given to the Lieutenant Governor in Council. As part of these undertakings, Union and Enbridge were not permitted to carry on any business activity other than the transmission, distribution or

storage of gas without the prior approval of the Board. There were no such restrictions application to affiliates of Union or Enbridge.

Order in Council No. 1540/2009 dated September 8, 2009 approved a Minister's Directive to the Board that effectively permits Union and Enbridge to own and operate, among others, certain renewable energy generation facilities, combined power and thermal energy generation facilities and energy storage facilities. These facilities are described in more detail on page 2 of the Board's July 29, 2010 letter.

The Board identified three potential scenarios in the July 29, 2010 letter that may arise:

* a gas utility may own a new qualifying facility;
* an affiliate of a gas utility may continue to own an existing facility and may own a new qualifying facility; or
* an affiliate of a gas utility may transfer an existing qualifying facility to the gas utility.

The first and third of these potential scenarios are new to Union and Enbridge. The second scenario is already permitted.

The scenarios listed above have raised issues about how the qualifying facility activities interact with the operations of the regulated utility.

In the December 22, 2009 Decision on a Preliminary Motion in the Enbridge rate proceeding (EB-2009-0172), the Board declined to allow the costs of Enbridge's "Green Energy Initiatives" that included certain qualifying facilities, to be included in rate base. On February 25, 2010, the Board address certain accounting issues in relation to assets and activities associated with qualifying facilities that are not rate-regulated with the issuance of "Guidelines: Regulatory and Accounting Treatments for Natural Gas Utility-Owned Qualifying Facilities or Assets" (G-2010-0030).

LPMA has assumed, for the purposes of these comments, that the accounting treatment outlined in the Guidelines for qualifying facilities that are not rate-regulated will be unchanged.

LPMA was also a participant in the EB-2009-0411 consultation process regarding amendments to the Distribution System Code and the Affiliate Relationships Code for Electricity Distributors and Transmitters. Amendments to the Act (section 71(3)) made by the *Green Energy and Green Economy Act, 2009*, allowed electricity distributors to own and operate qualifying facilities. These amendments, issued March 11, 2010, made certain provisions inapplicable to dealings between an electricity distributor and an affiliate in relation to activities associated with qualifying facilities.

The approach taken by the Board in the March 11, 2010 Amendments reflected its belief that the Board's rules pertaining to affiliate relationships should not drive business decision by creating incentives that favour one ownership structure over another (i.e. utility owned as compared to affiliate owned).

In the March 11, 2010 Notice of Amendments to Codes the Board also indicated that it expected to initiate a review of the natural gas ARC for the purpose of addressing the same affiliate relationship issues in the context of the qualifying facility activities of natural gas distributors.

LPMA has reviewed the proposed amendments and believe that the same general approach is being proposed by the Board for the gas distributors as has been put in place for the electricity distributors insofar as qualifying facility activities are concerned.

2. Proposed Amendments to the ARC

LPMA agrees with the Board that the ARC should not drive business decisions that would create incentives that favour one ownership structure over another and that it should be as consistent as possible with that for the electricity distributors.

LPMA has reviewed the proposed amendments related to Employee Sharing and Physical Separation and believe they are appropriate and that they mirror the provisions in the electricity ARC. Similarly, the changes related to the Term of Affiliate Contract that relates to a qualifying facility is appropriate.

LPMA supports the elimination of the need for a business case analysis prior to outsourcing a qualifying facility activity to an affiliate. LPMA emphasizes, as does the Board, that the outsourcing of services related to qualifying facilities cannot be tied to the outsourcing of any other services that are not related to qualifying facilities as a means of avoiding the need to undertake a business cases analysis for any of those other services.

With respect to the transfer pricing, LPMA again believes that the proposal is appropriate and consistent with that for electricity distributors. However, LPMA notes that in Appendix A under item number 9, the addition to be added immediately after section 2.3.9 is labeled 2.3.94A rather than 2.3.9A.

The Financial Transactions with Affiliates proposed changes again mirror the changes applicable to the electricity ARC. As a result LPMA believes they are appropriate. LPMA notes that the Board states that to the extent that there are concerns regarding the impact of the proposed amendments on a gas utility's rates or its continued stability, the Board believes that the matter can be adequately addressed in a proceeding to set the gas utility's rates. LPMA agrees with this statement; however, it believes that some sort of "early warning system" should be incorporated into the reporting requirements to ensure the financial stability of the rate regulated utility. An investment of a significant proportion of the utility's equity into an affiliate that has qualifying facilities does not guarantee the success of the affiliate. Circumstances beyond the control of the affiliate or the utility may result in failure of the affiliate or substantial devaluation of the affiliate. In such a situation, the financial stability of the utility may deteriorate to the point where the utility could find itself unable to operate on a day to day basis. Ring-fencing may not provide adequate protection to ratepayers. A fence built with the purpose of protecting the chickens from the fox will fail to provide protection if the posts holding up the fence are rotten.

An "early warning system" would provide the Board and ratepayers with a way of detecting the rot before the fence falls over.

LPMA has no issues with the proposed changes related to Equal Access to Services.

3. Proposed Amendments to the RRR

LPMA has reviewed the proposed amendments to the RRR and believe they are appropriate.

However, as noted above, as part of the Board's regulatory oversight of the natural gas utilities, LPMA believes that is appropriate for the Board to review the value of the investment in an affiliate with the goal of ensuring that ratepayers continue to be served by a financially stable entity. Negative financial consequences of investing in an affiliate should be brought to the attention of the Board by the utility immediately. The Board should then be in a position to determine if any action is required and if so, what should be done to ensure the continued viability of the regulated utility.

While LPMA believes that the need for it would be a rare occurrence, such an "early warning system" should be considered by the Board. After all, who would have foreseen the rapid collapse of the financial system and the auto sector just a few years ago?

Sincerely,

Randy Aiken

Randy Aiken
Aiken & Associates