



EPCOR Utilities Inc.

Code of Conduct and Exemption Application

February 3, 2004

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2004-010: EPCOR Utilities Inc.
Code of Conduct and Exemption Application
Application No. 1316005

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1 INTRODUCTION

EPCOR Utilities Inc. (EPCOR or EUI) applied to the Alberta Energy and Utilities Board (Board) on October 1, 2003, for approval of a Code of Conduct (Proposed EPCOR Code) that will apply to the utilities within the EPCOR Group of corporations (the Application). EPCOR Distribution Inc. (EDI) and EPCOR Transmission Inc. (ETI) also applied for approval of exemptions from certain sections of the Proposed EPCOR Code related to the sharing of employees and the release of confidential information.

The Board processed the Application by way of a written proceeding. The Board directed EPCOR to respond to the Board's preliminary information requests, noting that supplemental information was required in order to clarify the Application. EPCOR provided the requested information on November 10, 2003. Thereafter, the Board provided notice with respect to the Application, with a deadline for objections of November 21, 2003. The Board also advised that, in the absence of a valid objection(s), the Board might continue to process the Application, including potentially approving the Application, without further notice.

The Board did not receive any objections to the Application, and therefore considers that the proceeding closed on November 21, 2003.

2 DETAILS OF THE APPLICATION

The Proposed EPCOR Code was modeled on the Code of Conduct approved by the Board for the ATCO group of corporations in Decision 2003-040. EPCOR submitted that other than changing references in the Code of Conduct from "ATCO" to "EPCOR", the only substantive revision reflected in the Proposed EPCOR Code was to section 2.4 (the Coming into Force provisions), which was amended to provide that the Proposed EPCOR Code would come into effect 90 days after Board approval, and that existing agreements or arrangements must be brought into compliance with the Proposed EPCOR Code within 150 days of approval. EPCOR submitted those time frames were consistent with the time frames provided by the Board to the ATCO group in Decision 2003-040, and suggested that it would be fair and appropriate for EPCOR to be afforded a similar timeframe subsequent to the Board's decision with respect to the Proposed EPCOR Code.

Both ETI and EDI would be subject to the EPCOR Code, however EDI and ETI applied for an exemption from sections 3.3.1 (dealing with sharing of employees) and 6.3 (dealing with release of confidential information) of the Proposed EPCOR Code pursuant to section 2.6 of the Proposed EPCOR Code (dealing with exemptions). EDI and ETI requested an exemption rather than an amendment to the Proposed EPCOR Code.

EPCOR submitted that, as reflected in applications filed with the Board, ETI and EDI provided a number of services to, and received a number of services from one another pursuant to inter-
corporate service agreements, which have been filed with the Board. EPCOR stated that these services were provided on a “cost recovery basis” as that term was used in the Proposed EPCOR Code. EPCOR submitted the sharing of the services enabled, and would continue to enable, both ETI and EDI to exploit economies of scale and scope, that would result in significant cost savings and other benefits for the customers of both utilities. EPCOR also noted that during the course of providing these services, shared operational and administrative employees might acquire Confidential Information as defined in the Proposed EPCOR Code relating to a customer or potential customer of the utility that was not their employer.

EPCOR submitted that neither EPCOR Energy Services Inc. (EESI) nor EPCOR Energy Services (Alberta) Inc. (EESAI) would constitute utilities as defined in the Proposed EPCOR Code. EPCOR noted that neither would fall within the definition of an electric utility, gas utility or public utility as referenced in the Proposed EPCOR Code’s definition of utility. Alternatively, EPCOR submitted that EESI’s and EESAI’s relationships and interactions with EDI and ETI would be subject to certain provisions of the Proposed EPCOR Code.

3 VIEWS OF THE BOARD

3.1 Use of ATCO Code as Template

The Board notes that EPCOR modeled the Proposed EPCOR Code on the Code of Conduct approved by the Board for the ATCO group of corporations in [Decision 2003-040](#) (ATCO Code). The Board also notes that EUI simply changed references from ATCO to EPCOR, and that the only substantive changes related to section 2.4 (the coming into force provisions).

The Board appreciates EPCOR’s approach with respect to the Proposed EPCOR Code and the applied for exemptions, insofar as it relates to EUI, EDI and ETI. The Board considers that the Proposed EPCOR Code satisfies the Board’s requirements with respect to the business and affairs of EUI, EDI, and ETI.

3.2 Exemptions

The Board reviewed the applied for exemptions related to the sharing of certain employees between EDI and ETI, and the release of confidential information. The Board notes the reasons identified in the Application, that the exemptions would allow EDI and ETI to continue with sharing arrangements that are beneficial to customers of both utilities.

The Board is satisfied that the applied for exemptions, related to EDI and ETI, from sections 3.3.1 (dealing with sharing of employees) and 6.3 (dealing with release of confidential information) in the circumstances described in the Application are reasonable. The Board notes that the applied for exemptions relate to shared operational and administrative employees and do not relate to management team members, officers or directors.

In granting approval for the requested exemptions, the Board limits the exemption to the situations described in the Application and only in relation to shared operational and administrative employees. No exemption is granted in respect of management team members, officers or directors.

The Board also notes that the sharing arrangements described by EPCOR will continue to be subject to scrutiny by the Board on an ongoing basis via future rate proceedings and compliance reporting pursuant to the Proposed EPCOR Code as amended by this Decision (the EPCOR Code).

Specifically, the Board approves the following exemptions to the EPCOR Code:

Board Approved Exemption - Section 3.3.1

Notwithstanding the provisions of Section 3.3.1 (Sharing of Employees) of the EPCOR Code, ETI and EDI may share operational and administrative employees, but not management team members, officers or directors, in the manner and in the circumstances described in the Application and as permitted by this Decision, in connection with the provision of the following services:

- the real-time operation of ETI's and EDI's facilities, including emergency dispatch;
- inspection of operating facilities for safety and reliability;
- preventative, corrective and capital maintenance of facilities;
- system and operational planning;
- metering and meter reading;
- occupational health and safety training;
- environmental and waste management;
- stores and material handling; and
- accounting.

ETI and EDI may share employees in the manner herein described, provided that:

- (a) the services provided by the shared employees are accounted for on a Cost Recovery Basis;
- (b) the services provided by the shared employees shall be governed by the terms of the Inter-Corporate Service Agreements referred to in the Application; and
- (c) the employees to be shared are able to carry out their responsibilities in a manner that preserves the form, and the spirit and intent, of the EPCOR Code. In particular, an employee:
 - (i) shall not be shared if it could reasonably be considered to be detrimental to the interests of customers of ETI or EDI, and
 - (ii) if being shared, shall abstain from engaging in any activity that could reasonably be considered to be detrimental to the interests of the customers of ETI or EDI.

Board Approved Exemption - Section 6.3

ETI and EDI are also exempted from the provisions of Section 6.3 (No Release of Confidential Information) of the EPCOR Code to the extent that any employee of one Utility provides any of the above services to the other Utility and by so doing comes into possession of Confidential Information relating to a customer or potential customer of the other Utility.

The Board directs EPCOR to maintain on its website the current version of the Board approved Code. Further, the Board directs EPCOR to attach a Schedule B to the Proposed EPCOR Code, in the form provided for in Appendix 1 of this Decision, which will be updated from time to time, which will identify all exemptions granted by the Board by reference to the Board's Decision number, the date of issuance of the decision granting the exemption and the sections of the code to which the exemption applies.

In addition, the Board directs EPCOR to amend Section 2.6 of the Proposed EPCOR Code to read as follows:

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. EPCOR shall maintain and update from time to time a list of approved exemptions granted by the EUB and shall attach the list of approved exemptions as Schedule B to this Code.

3.3 Application of the Code to EESI and EESAI

The Board considered whether or not the Proposed EPCOR Code would, or should, apply to EESAI and EESI, and if so, how it should be applied. The Board notes that, in EPCOR's application, that neither EESI nor EESAI fall within the definition of "Utility". Accordingly, under the Application, the Proposed EPCOR Code would not apply to either EESI or EESAI. EPCOR noted in its Application, that EESI's and EESAI's relationships and interactions with EDI and ETI would be subject to the provisions of the Proposed EPCOR Code. The Board also notes that both EESI and EESAI would be subject to the electric Code of Conduct Regulation.

Although the Board considers that the combined measures of the Proposed EPCOR Code and the Code of Conduct Regulation would satisfy many of the Board's requirements with respect to an inter-affiliate code of conduct as it would pertain to EESI and EESAI, the Board is not persuaded that it is appropriate to rely solely on those measures. The Board continues to regulate both EESI and EESAI with respect to utility services (the regulated rate tariff), as they are defined in the Proposed EPCOR Code and therefore, the Board believes that both entities should be directly subject to the code of conduct approved by the Board.

Accordingly, the Board directs EPCOR to amend the definition of "Utility" in the Proposed EPCOR Code by deleting the present definition and by substituting the following definition:

2.1 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*;
- iii) “public utility” under the *Public Utilities Board Act, R.S.A. 2000, c. P-45*;
- iv) “regulated rate provider” under the *Electric Utilities Act, S.A. 2003, c. E-5.1*; or
- v) “default supply provider” under the *Gas Utilities Act, R.S.A. 2000, c. G-5*.

Notwithstanding the addition of EESI and ESSAI to the definition of “Utility”, the Board intends to avoid duplication of effort and inefficiencies where possible, and believes that there should not be an unnecessary burden on utilities or regulated service providers with respect to code of conduct compliance. As such, the Board reiterates its assertion in [Decision 2003-040](#) that entities covered by both the Code of Conduct Regulation and a Board approved code, should be able to satisfy all applicable requirements of both codes, without undue conflict or overlap.

The Board notes the ongoing efforts of the Market Surveillance Administrator (MSA) with respect to the electric Code of Conduct Regulation, and the development of the required compliance plans. The Board suggests that where EPCOR considers there to be any difference between the electric Code of Conduct Regulation and the EPCOR Code, EESI and ESSAI should comply with the stricter of the two. The Board believes that EESI and ESSAI should each be able to develop one compliance plan that would satisfy the requirements of both the electric Code of Conduct Regulation and the EPCOR Code.

3.4 Implementation Period

The Board has considered the required time that should be allotted for the implementation of the EPCOR Code. The Board notes, in the Application, that the Proposed EPCOR Code would have come into effect 90 days after Board approval, and that existing agreements or arrangements would have been brought into compliance within 150 days of Board approval. The Board notes that EPCOR submitted it would be ‘fair and appropriate’ for it to be afforded a similar timeframe to implement and conform to the Proposed EPCOR Code to that provided for ATCO pursuant to Decision 2003-040.

The Board, for a variety of reasons, does not believe that it is necessary to provide a similar implementation period to EPCOR as was provided to ATCO. The Board notes that the EPCOR Code is essentially the same as Proposed EPCOR Code. The Board believes it would be reasonable to expect that EPCOR has been evaluating and working toward the subsequent implementation and compliance requirements, both before and after the Application was submitted on October 1, 2003. Furthermore, the Board notes that EPCOR does not have as complex a corporate organization as ATCO and was not dealing with as much uncertainty as ATCO was, or a situation where the approved code was much different from that applied for, as was the case when the ATCO Code was approved.

Therefore, the Board directs that the EPCOR Code will come into force on April 1, 2004, and that existing agreements or arrangements not in compliance with the EPCOR Code shall be brought into compliance on or before June 1, 2004. The Board notes that the coming into force date is some 180 days after the Application and the further compliance date is some 240 days after submission of the Application.

Accordingly, the Board directs EPCOR to amend the provisions of Section 2.4 of the Proposed EPCOR Code by deleting the wording of present section and by substituting the following wording therefore:

2.4 Coming into Force

This Code comes into force on April 1, 2004, 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 June 1, 2004.

To acknowledge implementation of the EPCOR Code, the Board directs each EPCOR Utility (including EESI and EESAI) to file with the Board, prior to April 1, 2004, a written acknowledgement verifying that:

- the provisions of the EPCOR Code have been endorsed by the Board of Directors of the Utility;
- a Compliance Officer for the Utility has been appointed pursuant to section 7.3 of the EPCOR Code; and
- except for agreements or arrangements to be brought into compliance by June 1, 2004, as noted previously, the provisions of the EPCOR Code will be implemented immediately by the Utility.

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 the EPCOR Code. Accordingly, the Board understands that EPCOR may seek exemptions from time to time from particular provisions of the EPCOR Code.

The entire Board approved EPCOR Code is included in this Decision as [Appendix 1](#).

4 ORDER

The Board therefore approves:

- (1) The EPCOR Code as amended by this Decision, and included as Appendix 1, is approved.
- (2) Each EPCOR Utility (including EESI and EESAI) shall implement the provisions of the EPCOR Code by no later than April 1, 2004.
- (3) Each EPCOR Utility (including EESI and EESAI) shall file with the Board, prior to the foregoing implementation date, an acknowledgement as directed in section 3.4 of the Decision.
- (4) Each EPCOR Utility (including EESI and EESAI) shall be in full compliance with the EPCOR Code on or before June 1, 2004.

- (5) EDI and ETI shall be exempt from sections 3.3.1 (dealing with Sharing of Employees) and 6.3 (dealing with Release of Confidential Information) solely for the purposes and in the manner described in the Application and in the manner approved by this Decision.
- (6) Each EPCOR Utility (including EESI and EESAI) shall file its initial Compliance Plan with the Board on or before June 1, 2004.

Dated in Calgary, Alberta on February 3, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

A. J. Berg, P. Eng.
Presiding Member

(original signed by)

R. G. Lock, P. Eng.
Member

(original signed by)

T. McGee
Member

APPENDIX 1 – EPCOR GROUP INTER-AFFILIATE CODE OF CONDUCT (AS AMENDED BY THE BOARD)

[\(Click here to return to Order\)](#)



"Appendix 1 EPCOR
Code of Conduct - as

(Consists of 20 pages)

**EPCOR GROUP
INTER-AFFILIATE**

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**EPCOR GROUP
INTER-AFFILIATE
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 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 EPCOR 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 EPCOR 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) **“EPCOR”** means EPCOR Utilities Inc.

- e) **“EPCOR 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 EPCOR 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;
 - iii) “public utility” under the *Public Utilities Board Act*, R.S.A. 2000, c. P-45;
 - iv) “regulated rate provider” under the *Electric Utilities Act*, S.A. 2003, c. E-5.1; or
 - v) “default supply provider” under the *Gas Utilities Act*, R.S.A. 2000, c. G-5.

- 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 EPCOR 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 April 1, 2004, 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 June 1, 2004.

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. EPCOR shall maintain and update from time to time a list of approved exemptions granted by the EUB and shall attach the list of approved exemptions as Schedule B to this Code.

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.

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 EPCOR Group 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: _____

SCHEDULE B – LIST OF EXEMPTIONS

	<u>EUB Decision No.</u>	<u>Date</u>	<u>Sections of Code to which Exemption Applies</u>
1.	Decision 2004-010 Note: Please refer to the EPCOR application resulting in Decision 2004-010 and to the full text of the Decision for the complete context of the exemptions granted.	February 3, 2004	Section 3.3.1 -Sharing of Employees Section 6.3 – No Release of Confidential Information