



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

Alberta Energy and Utilities Board

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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 Intervenors

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 a 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

2003-040
p. 38

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;

- 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;

- 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;

- 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: _____