British Columbia Utilities Commission

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VIA EFILE

October 25, 2016

FEI ALL-INCLUSIVE CODE OF CONDUCT AND TRANSFER PRICING POLICY EXHIBIT A2-1

Ms. Diane Roy
Vice President
Regulatory Affairs
FortisBC Energy Inc.
16705 Fraser Highway
Surrey, BC V3S 2X7

Dear Ms. Roy:

Re: FortisBC Energy Inc.
All-Inclusive Code of Conduct and Transfer Pricing Policy

Commission staff submit the following document for the record in this proceeding: April, 1997 British Columbia Utilities Commission Retail Markets Downstream of the Utility Meter - Guidelines.

Yours truly,

Original signed by:

Laurel Ross

/yl
Attachment

Retail Markets Downstream of the Utility Meter

Guidelines

APRIL, 1997

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1.0 INTRODUCTION

On July 10, 1996, the Commission announced a process for the review of the retail market downstream of the utility meter. In particular the Commission sought to examine the forces which are causing utilities to wish to expand the number and kinds of services which they offer and to determine if, and to what extent, utilities and/or their affiliated non-regulated businesses ("NRBs") should be allowed to participate in downstream retail markets.

As an initial step in the review process, the Commission held a workshop on October 16, 1996 at which a variety of parties were given the opportunity to present their views. In addition, the Commission called for written submissions by October 31, 1996, including advice as to what future processes were required to address the issue. Submissions were received from many parties, including utilities, marketers, independent contractors, and customers. After reviewing all the submissions, the Commission determined that this matter could best proceed through a written process. Accordingly, the Commission instructed staff to prepare a position paper on this topic which could then be circulated for discussion by interested parties.

The staff paper, which was released December 16, 1996, reviewed the traditional role of utilities and emerging pressures for changes to this role, provided staff's interpretation of the Commission's jurisdiction with respect to utility or utility-affiliated NRB participation in the downstream market, and summarized the issues and concerns regarding utility participation which had been presented to the Commission. Based on the above, staff concluded that there were likely to be circumstances in which utility participation in the downstream market, either directly or through an NRB using some utility facilities or services ("related-NRB"), would be desirable and other circumstances in which participation should be limited to self-financing, stand-alone, arm's length NRBs using no resources of the utility. Accordingly, the staff position paper proposed a set of principles and guidelines for the Commission to use to assess individual utility proposals to determine which proposals should be pursued using stand-alone NRBs and which could be pursued either by the utility directly or through a related-NRB.

Initial comments to the Commission on the position paper were requested by January 31, 1997. In addition, the process allowed parties to respond to the initial comments of other parties by supplying reply comments to the Commission by February 21, 1997. The Commission received initial comments from 24 parties and replies to the initial comments from six parties. A list of parties providing comments is attached as Appendix 1.

This document summarizes the submissions made with respect to the staff position paper and concludes with the findings of the Commission with respect to the participation of utilities and their NRBs in the retail market downstream of the utility meter.

2.0 THE RETAIL MARKET DOWNSTREAM OF THE UTILITY METER

As discussed in the staff position paper, utilities are generally established in response to natural monopoly conditions. A natural monopoly is said to occur if the provision of a good or service can be provided at lowest cost by a single firm, rather than by two or more firms; i.e., there exist substantial economies of scale. Utilities may also be asked to provide an associated product if its provision by the utility leads to economies of scope; i.e., a single firm is able to produce two or more joint products at a lower unit cost than single firms each producing just one of these products. However, because the provision of the good or service by a single firm leads to the potential of monopoly pricing, utilities are generally regulated with respect to price and service quality. A very broad definition of a public utility is provided in the *Utilities Commission Act* ("the Act") for the purposes of regulation under Part 3 of the Act. The definition has remained unchanged since the 1970s.

Since the mid-1980s, both natural gas and electricity utilities have found that at least some of the services which they have traditionally provided, including commodity sales and energy-efficiency services, can be provided by other non-regulated market participants. As a result, the breadth of true natural monopoly services has decreased even though the range of regulated utility options has greatly expanded to accommodate competitive markets upstream of the utility. This has led to the deregulation of certain commodity components of traditional utility services and reliance for their provision on the competitive market. As well, it has prompted requests for further deregulation of other services still provided by the utility.

One consequence of the growing deregulation of natural gas and electricity utilities has been a movement towards convergence between the markets for natural gas and electricity. One response to this convergence has been the emergence of 'mega-marketers', that is, firms which offer customers a full menu of energy services, including provision of both the natural gas and the electricity commodity, commodity contract marketing, equipment sales, rentals and servicing, and energy efficiency marketing. For those customers who have the technical capability, the emergence of mega-marketers allows them to switch more easily between natural gas, electricity and efficiency measures as prices dictate. For all customers, the emergence of mega-marketers can mean increased convenience through 'one-stop shopping'.

The reduction in the size of the traditional utility domain, as certain services become available from non-regulated suppliers and as mega-marketers become more prominent, has led some utilities to re-evaluate their traditional service offerings. For some utilities, this is leading to a desire to offer services not previously offered by utilities and to move into downstream retail markets not traditionally served by utilities. For others, it is leading to a desire to change the way in which services are offered, notably to offer certain services on a non-regulated basis in the downstream retail market rather than as a regulated tariff item.

The retail market downstream of the utility meter can generally be described as consisting of those goods and services which are related to or support the delivery and/or use of the energy commodity. Figure 1 identifies many of the energy and energy-related products and services contained in the retail market downstream of the utility meter.

Figure 1: Potential Goods and Services Downstream of the Utility Meter

Burner Tip/End-Use Services - Repair and Maintenance - Equipment Sales/Rentals	Billing and Metering[1] Meter Services Safety and Security Services - Carbon Monoxide Detectors - Call Dispatch
DSM Investments	
Financing	
Warranties	Heating Insurance Services
Energy Management Systems	Commodity Sales

In general, the total range of goods and services potentially provided by energy utilities can be categorized as belonging to one of three areas. Figure 2 depicts these areas as part of the question of determining the proper domain of the utility. These areas are: goods and services which still clearly are defined as core monopoly products (e.g., wires and pipes), competitive products which could best be produced by a variety of players operating within a competitive market (e.g., appliance sales), and debatable/transitional products, i.e., those which are associated with the monopoly core and which may or may not be considered true monopoly activities depending on one's assessment at any given time (e.g., billing/meter information). For example, these products might be provided by the utility as they emerge, later be produced by a mix of utility and unregulated providers as the market grows and eventually be provided solely by the competitive market when the market is mature (e.g., natural gas vehicle conversions). Core monopoly products result primarily from economies of scale or scope and are expected to decrease as a result of advances in technology reducing these economies, competitors' demands for access to the market for these products, customers' demands for more choice and the success of deregulation elsewhere.

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1. Some parties argue that the meter/regulator assembly and meter reading information to customers may also become a competitive service. However, in the near term, the utility will require basic meters in its control to verify the quantities of energy transported by the monopoly pipes or wires.

Figure 2

The Domain of the Utility

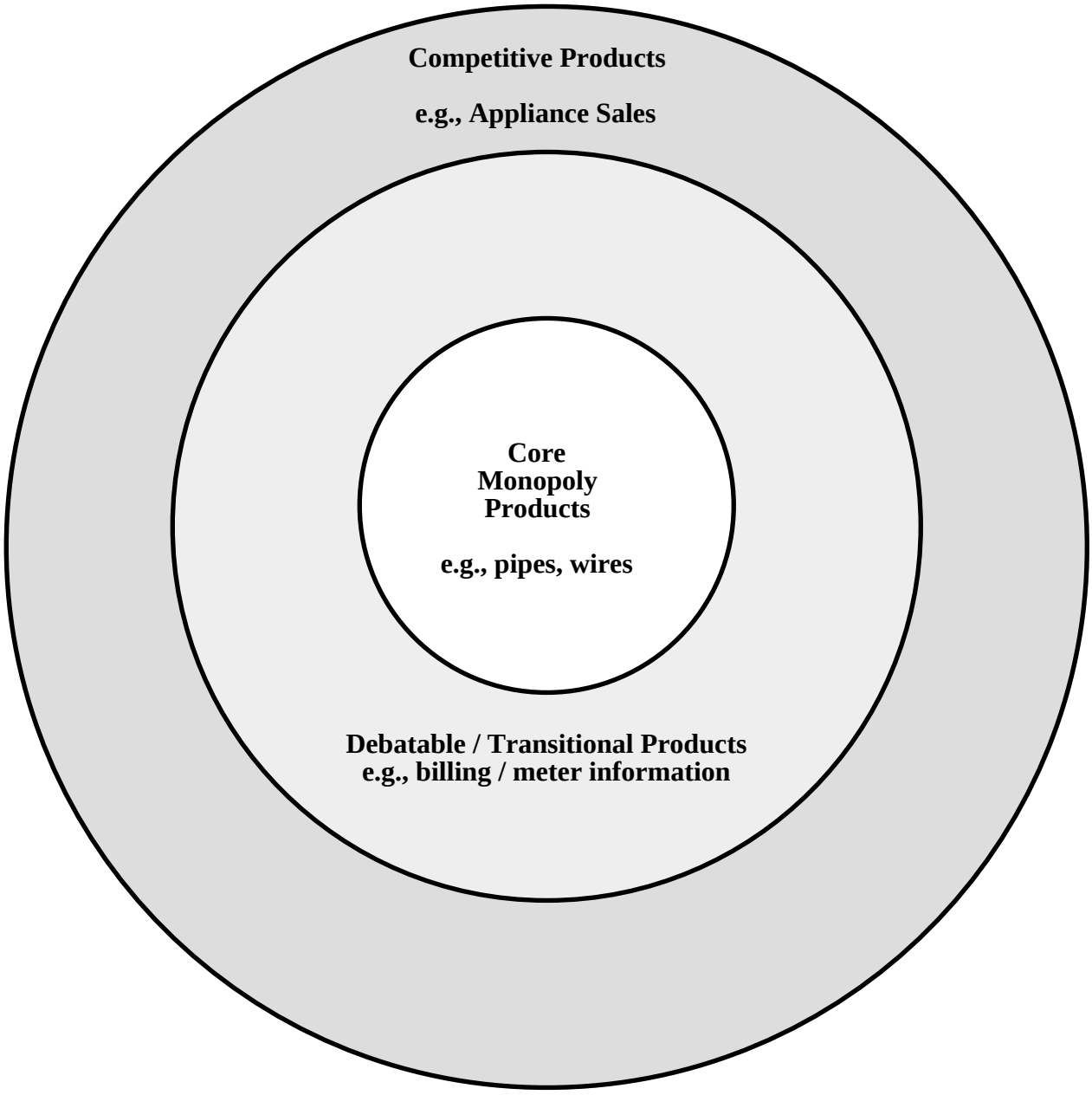


Figure 3: Goods and Services Providers Downstream of the Utility Meter

Heating/Cooling/Plumbing and Electrical Contractors	Mega-Box Stores
	Appliance Retailers
Energy Service Companies ("ESCOs")	Telecom/Cable Companies
Energy Consultants	Financial Institutions
Security Companies	Software Developers
Home Service Retailers	Call/Dispatch Centres
Home Inspectors	B.C. Utilities and NRBs
Hardware/Lumber Stores	Non-B.C. Utilities and NRBs

Figure 3 identifies current and potential service providers of goods and services downstream of the utility meter. These parties vary substantially in size and specialization. Other market participants include traditional customers and other parties such as water/sewer service providers and emergency response providers that might be able to use services which the utility provides 'in-house', (e.g., meter reading, dispatch services).

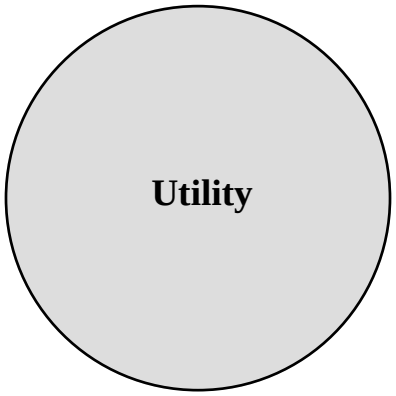
3.0 ROLE OF THE COMMISSION IN THE NEW MARKET PLACE

In British Columbia, regulation of natural gas and electricity utilities is undertaken by the British Columbia Utilities Commission ("BCUC", "the Commission") under the authority of the Act. The Commission's powers include oversight of utility rates and the utility expenditures responsible for those rates. The staff position paper concluded that these powers give the Commission the ability to define the utility's domain, that is to determine which goods and services the utility will provide, since the utility would be unlikely to offer services for which it cannot recover the costs. As a result, the paper suggested that the Commission has the power to influence the corporate structure under which utility shareholders will participate in the unregulated market.

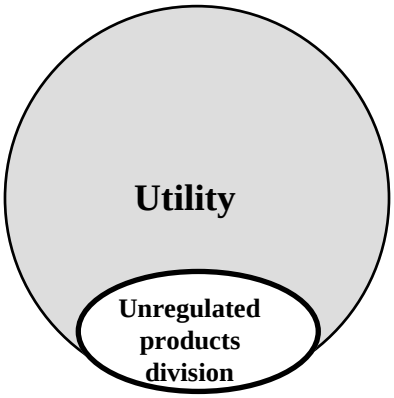
Four corporate structures, under which retail products and services could potentially be provided, were identified in the staff position paper: i) through the utility as a regulated tariff product; ii) through the utility as a non-regulated product; iii) through an NRB affiliated with the utility either as a subsidiary or through a parent company and using some utility facilities and services; or iv) through an NRB but using no utility facilities or services. These structures are differentiated primarily by the extent to which utility assets and services are used to provide goods and services into the downstream retail market. These four corporate structures are presented in Figure 4.

Figure 4

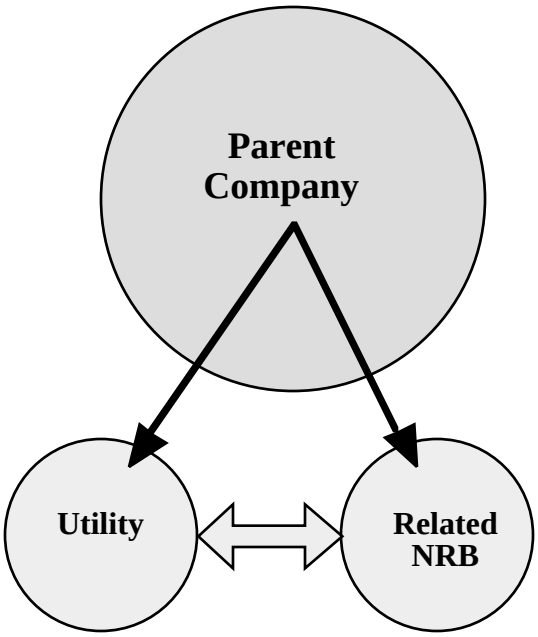
Potential Corporate Structures



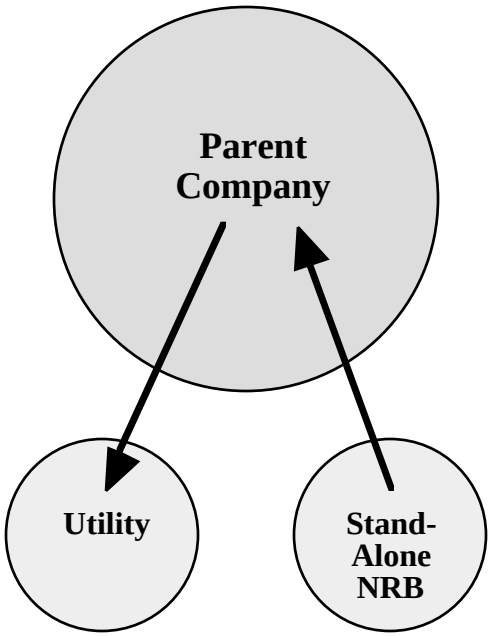
1
The utility is the sole corporate entity, providing downstream products through a regulated tariff.



2
The utility is the sole corporate entity, providing downstream products on an unregulated basis, perhaps through a division.



3
Unregulated retail products provided by related NRB using some utility facilities and services.



4
Unregulated retail products provided by stand-alone NRB using no utility facilities or services.

Although the paper suggested that the Commission can determine how the utility or its affiliates participate in the unregulated market, it indicated that the Commission does not have the power to control the activities or to determine what services an NRB will provide **if** the NRB is a self-financing, stand-alone, arm's length affiliate using no resources of the utility. However, where the NRB is not a completely stand-alone entity, the paper suggested that the Commission can exercise control over funding, manpower or other services that may be provided by the utility to the NRB, including the use of shared offices, shared services and manpower charge-out rates.

In either case, the paper stated that the power to oversee utility rates and expenditures confers on the Commission the power to oversee the relationship between the utility and any related-NRB to ensure that no NRB costs are passed on to utility customers. Specifically, the Commission has a duty to ensure that utility ratepayers are, at the very least, not negatively affected by the activities of NRBs. However, the paper indicated that it is less clear whether the Commission has the power to ensure that NRBs receive no benefit from being affiliated to a utility, even if no costs accrue to the utility customers from the affiliation.

As expected, the Commission received a variety of comments concerning the views expressed in the staff position paper. Generally, the utilities argued that the Commission had limited jurisdiction with respect to the issue of utility participation, either directly or indirectly, in downstream retail markets. For example, the British Columbia Hydro and Power Authority ("B.C. Hydro") argued that the Act does not grant jurisdiction to the Commission to regulate competition in downstream retail markets, to restrict a utility in any way from entering the downstream retail market, nor to exercise any sort of jurisdiction over the activities of a stand-alone NRB.

BC Gas Utility Ltd. ("BC Gas") argued that the Commission has the jurisdiction to oversee the prudency of the provision of resources by the utility to an NRB but has no jurisdiction to constrain an NRB from obtaining resources from the utility or any other market provider. This seems to imply that in BC Gas' view the Commission has responsibility to minimize potential negative impacts on ratepayers but cannot determine what benefits, if any, NRBs or other participants receive from the utility as long as there is no risk of cross-subsidization from ratepayers. In addition, BC Gas stated that the Commission has no jurisdiction to determine the appropriate degree of competition in the market place.

Westcoast Energy Inc. ("Westcoast") also argued that the regulator does not have jurisdiction over the activities of the NRB even if the NRB purchases some support services from the utility. Westcoast stated that the regulator is limited to ensuring that the utility does not, by its behavior or structure, abuse its monopoly position to prevent the development or continuation of a competitive market for those products and services that are not regulated. Westcoast stated that this implies that there should be no cross-subsidization and that NRBs should not be given information which would interfere with fair competition.

Enron Capital and Trade Resources Corp. ("Enron") took a broader view of the Commission's powers, stating that the Commission's powers include the ability to restrict a utility from entering the downstream retail market and to regulate the relationship between the utility and NRBs. In Enron's view, this includes the power to ensure that NRBs receive no benefit from their affiliation with a utility, even if no costs accrue to the utility customer. In this view they were supported by the Heating, Ventilating and Cooling Industry Association ("HVCI").

In response to these submissions, the Commission staff sought a legal opinion on the issue of the Commission's jurisdiction with respect to downstream retail markets. In summary, the opinion stated the following:

1. The Commission does not have the jurisdiction to directly regulate an NRB unless the NRB is itself a public utility, a common carrier, or a common processor.

2. The Commission has the jurisdiction to regulate the relationship between a public utility and an affiliated NRB to the extent that the relationship affects ratepayers. For example, the Commission has the jurisdiction to ensure that an NRB is not 'subsidized' by a public utility to the detriment of ratepayers.

3. The Commission does not, however, have the jurisdiction to regulate the relationship between a public utility and an NRB so as to ensure the relationship does not affect the competitive retail market downstream of the meter. The Commission's jurisdiction is limited to consideration of the effects of the relationship on ratepayers.

4. The Commission has the jurisdiction to regulate retail market downstream of the utility meter ("RMDM") activities by a public utility, but only to the extent that such activities affect ratepayers. Similarly, the Commission has the jurisdiction to prohibit a public utility from participating in RMDM if prohibition is the only reasonable and effective means by which the Commission can mitigate or alleviate any negative effects on ratepayers.

5. Ratepayers do not own a public utility's corporate name. The corporate name is goodwill which is owned by the company. The shareholders have a right to share in the assets of a company, including the corporate name, if the company is dissolved.[1]

4.0 STAFF PROPOSAL: POSITIONS OF PARTIES

This section contains a summary of the views presented in the submissions regarding the staff paper. The Commission's determinations on these issues are provided in Section 5. This allows for a consolidated statement of Commission policy that may be used as a working document for future discussions.

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1. Opinion Letter from Boughton, Peterson Yang Anderson dated March 10, 1997.

4.1 Commission Objectives

The Commission staff position paper proposed a set of principles and guidelines to help the Commission make determinations regarding utility and related-NRB participation in the retail market downstream of the utility meter. As a starting point, the paper identified four objectives which staff suggested should guide any determinations the Commission made. These are presented in Figure 5.

Figure 5: Suggested Commission Objectives

There must be no subsidy of unregulated business activities, whether undertaken by the utility or its NRB, by utility ratepayers.
The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is the risks must have no impact on utility ratepayers.
The most economically efficient allocation of goods and resources should be sought.
Customer choice should be maximized.

These objectives were not seen to be completely mutually achievable in all cases so that it was expected that trade-offs between objectives would need to be made. Further, staff expected that the extent to which the achievement of one objective would preclude the achievement of another would depend on the individual circumstances associated with a proposal. As a result, staff suggested that any proposal by a utility to enter the downstream retail market, either directly or through a related-NRB, should be evaluated by the Commission on a product and utility specific basis.

All parties seemed to be in agreement with the first two objectives identified in the staff position paper, although Pacific Northern Gas Ltd. ("PNG") stated that there should be symmetry between risk and reward so that, if the NRB bore all the risk of the unregulated enterprise, it should also receive all the reward.

However, several parties took issue with the third and fourth objectives identified in the paper. The Consulting Engineers of British Columbia ("CEBC") suggested that the Commission did not have the jurisdiction to pursue either the third or fourth objectives. This was echoed by HVCI who argued that the Commission did not have a mandate to influence the market in any way. In particular, they argued that the Commission's mandate did not extend to exploiting economies of scale or scope, even if their exploitation benefited ratepayers, nor did it extend to the maximization of customer choice. The Mechanical

Contractors Association of British Columbia ("MCABC") suggested that the objectives were unclear while PNG indicated that economic efficiency was difficult to measure objectively.

In contrast, the Consumers Association of Canada (B.C. Branch) et al. ("CACBC (B.C.) et al.") agreed with all four objectives and indicated that priority should be given to maximizing customer choice. Westcoast also appeared to support all four objectives, arguing that customers should be free to choose what they want and that their choice should determine market structure. Westcoast stated that the rights of customers and shareholders to capitalize on potential efficiency gains should also be recognized. PNG also supported the objective of customer choice and noted that a key aspect of customer choice is the quality of service provided, not just the number of providers.

Enron also supported all four objectives but indicated that a fifth objective should be added, namely, the preservation and enhancement of robust competition in downstream markets. Enron argued that preservation and enhancement of robust competition would support economic efficiency and customer choice. In contrast, BC Gas argued that the Commission did not have jurisdiction to preserve or enhance competition so that the objective suggested by Enron should not be accepted.

BC Gas did not take issue with the four objectives put forward by staff but stated that different proposals to move current utility services from the utility to an NRB will affect the objectives differently and that flexibility will be required. Further, BC Gas argued that any statement of objectives adopted by the Commission should include some reference with respect to the Commission pursuing these objectives only in the areas in which it has jurisdiction.

4.2 Choosing a Corporate Structure: Criteria

As shown in Figure 4, the staff position paper identified four corporate structure options under which goods and services could be provided to the downstream retail market. The paper suggested that, for any individual proposal for utility participation in the downstream retail market, the corporate structure which should be chosen was that which best met the four objectives. As shown in Figure 4, these corporate structures are:

i) provision by the utility as a regulated tariff item;
ii) provision by the utility as an unregulated good;
iii) provision by an NRB using some utility resources; and
iv) provision by a completely stand-alone NRB using no utility resources.

In assessing which of the four corporate structure options best satisfies the four objectives discussed above for any particular proposal, the position paper suggested the following criteria.

i) Does a natural monopoly currently exist for the good or service?

ii) If the good or service is not a natural monopoly, can the utility ratepayer be sufficiently protected if either the utility or an NRB offers the good or service?

iii) Are there significant economies of scale or scope associated with the good or service?

iv) Could the provision of the good or service be used to offset assets which would otherwise be stranded?

v) Does there already exist significant customer choice with respect to the good or service?

vi) Is the provision of the good or service by the utility or a related-NRB likely to lead to market dominance abuses in the long term?

Several parties indicated that of the four potential corporate structures identified for the delivery of goods and services to the downstream retail market, only two were acceptable. These were: i) provision by the utility as an regulated tariff item, and iv) provision by completely stand-alone NRBs using no utility resources. Groups such as HVCI and MCABC argued that, unless the good or service were a natural monopoly, utilities should only be allowed to participate in the downstream retail market through a stand-alone NRB using no utility facilities or services. This was seen as providing maximum protection to the ratepayer and is consistent with their view that only the first two of the four staff objectives should be reflected in the Commission's decision making. Further, MCABC argued that given the current level of fiscal restraint in government, it was unlikely that codes of conduct and other watchdog measures could be adequately enforced.

These groups appeared to recognize that using utility resources to provide downstream services could result in the avoidance of stranded utility assets but argued that it would be at the expense of current service providers. CEBC argued that the Commission should not be concerned about the economic well-being of the utility at the expense of the economic well-being of other industry participants, while MCABC argued that reduced utility earnings now should be weighed against years of good, stable earnings. Further, MCABC argued that allowing utilities to compete in the downstream retail market, either directly or through related-NRBs, would lead to a loss of customer choice in the long term.

Enron also argued that utilities should be prohibited from participating in the downstream market other than through stand-alone NRBs except under very exceptional circumstances. Although Enron did not appear to reject the proposed criteria, they argued that restricting participation to stand-alone NRBs was required to mitigate both the risk of cross-subsidization and the risk of anti-competitive behavior by the utility. Further, they argued that, since the only appropriate utility functions were those related to the

'pipes and wires', there was unlikely to be any significant economies of scale or scope to offset the increased risk of a related-NRB. Finally, they argued that they did not believe utility participation would enhance customer choice since any competitive advantage accruing to the NRB from association with the utility would be detrimental to competition. For example, Enron suggested that utility participation in Demand-Side Management ("DSM") programs does not enhance customer choice since it restricts participation by new entrants that could provide the service. Accordingly, Enron asked the Commission to adopt the decision taken by the Manitoba Public Utilities Board, which prohibited utility participation except through completely stand-alone NRBs.[1]

In contrast to the position outlined above, the utilities supported the potential use of related-NRBs to enter the downstream retail market. West Kootenay Power Ltd. ("WKP") agreed that a stand-alone NRB was the best way to protect ratepayers but stated that it might not be ideal in every circumstance. In particular, WKP argued that restricting participation to stand-alone NRBs could prevent achievement of economies of scale or scope, particularly when these economies were linked to core competencies. Accordingly, WKP argued that, when there are substitutes which could provide effective ratepayer protection, these alternatives should be allowed .

BC Gas indicated that it wished to move existing utility services which could or should be provided on a competitive basis out of the utility and into NRBs but indicated that this would need to be done as market conditions permitted. Further, BC Gas indicated that, while it viewed the provision of retail services by a stand-alone NRB as the preferred long-term option, since it prevented any cross-subsidization by utility ratepayers, in the short run it might be necessary to use related-NRBs as a transitional step. BC Gas urged the Commission to provide explicit recognition of the need to permit the 'transitioning' of emerging RMDM products and services from regulated utilities to non-regulated companies. PNG also argued for the use of related-NRBs to avoid stranded costs and stated that the issue of stranded costs was likely to achieve greater importance as the areas of natural monopoly diminished.

BC Gas also expressed concern with how criteria v) and vi) might be applied. With respect to criterion v), BC Gas suggested that, if the utility already has some of the market share of a product or service which is now competitive, the service should be 'transitioned' to the market regardless of the number of competitors. Further, the utility argued that existing and potential customers should be allowed to choose the service they take as well as their service provider.

With respect to criterion vi), BC Gas argued that the Commission has no mandate to determine the potential for long term competitive market abuses, except insofar as the utility's provision of services potentially creates the abuses. Similar views were expressed by WKP, which argued that the

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1. Manitoba Public Utilities Board, *Public Hearing to Review the Guidelines for Acceptable Conduct Between Centra Gas Manitoba In. and its Affiliated Companies*, Order of the Board No. 110/96, released November 4, 1996.

Commission could not consider impacts on unregulated business or unregulated markets when exercising its jurisdiction over services provided by a utility to an NRB.

Westcoast recognized that total separation does provide maximum protection to ratepayers but argued that other factors also needed to be considered. As indicated earlier, Westcoast argued that the rights of consumers and shareholders to capitalize on potential efficiency gains were important. As a result, they argued the degree of corporate separation should reflect individual circumstances.

Westcoast also expressed concern with respect to criterion vi), arguing that the regulator is limited to ensuring the utility does not, by its behavior or structure, abuse its monopoly position to prevent the development or continuation of a competitive market for those products and services which are not regulated. Specifically, they argued that the Commission is confined to ensuring that there is no cross-subsidization and that NRBs are not given information which would interfere with fair competition. In addition, Westcoast stated that market dominance achieved under fair competition and contestable market conditions was not, in and of itself, abusive. Finally, Westcoast argued that forcing a stand-alone NRB structure on utility participation in retail markets was of no value to consumers unless it was the result of customer choice.

Other parties, such as Willis Energy Services ("Willis") and Kanelk Transmission Company ("Kanelk"), argued that participation through stand-alone NRBs should not be required under all circumstances. Willis argued that this could lead to extra costs and that as long as NRBs covered their own costs ratepayers were adequately protected. Kanelk argued that allowing utilities to compete in the downstream retail market increased customer choice.

4.3 Choosing a Corporate Structure: Principles

Finally, the staff position paper suggested that if the six criteria discussed above were accepted, the following principles would be appropriate for making determinations with respect to proposals regarding specific goods and services.

i) If a natural monopoly exists for the good or service, it should be provided as a regulated tariff item (Corporate Structure 1 in Figure 4).

ii) Utility participation in the unregulated downstream market by completely stand-alone NRBs using no utility resources is generally the preferred option since it provides the maximum protection to utility ratepayers (Corporate Structure 4 in Figure 4). Variations from this option should be undertaken only when it can be shown that this option would result in the loss of significant economies of scale or scope, the incurrence of substantial stranded costs for the utility, or undue restriction in customer choice.

iii) The onus should always be on the utility to prove that the benefits associated with the use of utility resources are sufficient to warrant the changed structure. Generally, the Commission would expect to see economies of scale or scope, or the avoidance of stranded costs, only with respect to goods or services which are closely aligned to the utility's core competencies, e.g., billing and meter reading and meter services. Similarly, benefits from increased customer choice are most likely to occur in new and emerging markets or where there are few current providers of the good or service, (e.g., equipment repair services in remote communities).

iv) If the Commission decides to allow the use of utility resources in the provision of the unregulated good or service, the preferred option is through a related-NRB (Corporate Structure 3 in Figure 4). Direct participation by the utility in the provision of an unregulated good or service should be allowed only when the costs associated with forcing the provision through the related-NRB structure would significantly offset the benefits associated with the use of the utility's resources (Corporate Structure 2 in Figure 4).

v) Utilities and their related-NRBs must move unregulated products which use utility resources into stand-alone NRBs as soon as market conditions warrant or the Commission otherwise so determines (Corporate Structure 4 in Figure 4). Utilities will be required to provide periodic proof that the benefits associated with the use of utility services continue to exist.

vi) In all cases, the Commission should consider the long-term effects on the market of utility or related-NRB provision of unregulated goods and services.

All parties appeared to agree that if a good or service were a natural monopoly, it should be provided as a regulated tariff item. MCABC also supported the concept that a completely stand-alone NRB was the preferred option for utility participation in the downstream retail market and that the onus is on the utility to prove why a variation from this structure is desirable. However, MCABC opposed the use of any utility resources in the provision of unregulated goods and services under any corporate structure.

MCABC supported the principle that utilities and their related-NRBs must move unregulated products which use utility resources into stand-alone NRBs as soon as market conditions warrant or when the Commission otherwise so determines. However, MCABC expressed concern that the staff position paper appeared to envision a situation in which the utility would begin a project at ratepayer expense but move it to an NRB once it became profitable, without compensation to the utility. MCABC argued that assets acquired under regulation are not the exclusive property of the company and shareholders but are the shared assets of both the company and ratepayers. Accordingly, it stated that if assets were moved to an NRB, the utility and its ratepayers should be compensated.

As well, MCABC requested that the Commission nullify the 1988 agreement between Inland Natural Gas and its successors and MCABC, regarding appliance sales. Finally, MCABC indicated that the principle that the Commission should consider the long-term effects on the market of utility or related-NRB provision of unregulated goods and services was unclear.

The Association for the Advancement of Sustainable Energy Policy ("AASEP") also was concerned that ratepayers might be made to pay the start-up costs for DSM programs which would then be transferred to NRBs once the programs became profitable. Additionally, AASEP expressed concern that the movement to non-regulated supply would change the type of programs offered, that market failures would not be addressed and that too little DSM would be purchased. Accordingly, AASEP argued that utilities should only be allowed to change DSM programs if they can show that the new programs would deliver equal or greater savings.

Both PNG and BC Gas indicated that they saw the principles set out in the staff position paper as being reasonable, although BC Gas stated that the Commission should make clear that any principles and guidelines adopted by the Commission applied only to the provision of utility resources used to support downstream retail market activities during a transitional period. Similarly, WKP stated that the final principles and guidelines should clearly state that the principles and guidelines are not intended to affect products and services traditionally provided by the utility, such as metering and billing. In addition, BC Gas stated that in its view, in considering long-term effects, the Commission was limited to considering the terms for provision of resources by the utility to a related-NRB and the impact on the utility and its ratepayers, and not to the market generally. This view was supported by the City of New Westminster ("the City") which suggested that the Commission did not have the jurisdiction to consider the effect that utility-provided goods and services could have on the market. In addition, the City argued that the Commission did not have the responsibility to determine when market or other conditions warranted the transfer of a business activity from the utility to an NRB.

Kanelk stated that they did not support the principles set out in the paper since they viewed the Commission's duty to be limited to ensuring that ratepayers do not subsidize non-regulated operations. Accordingly, they argued that each utility should have the flexibility to develop its own corporate structure, as long as it can reasonably demonstrate that the regulated operations are not subsidizing the non-regulated operations.

4.4 Transfer Pricing Policy

The staff position paper suggested that, where utility resources are used to provide unregulated goods and services, either directly or through a related-NRB, the use of the utility resources must comply with a Commission-approved transfer pricing methodology. Further, the paper suggested that the transfer pricing policy should ensure the following:

i) The operating costs of non-regulated activities are not reflected in the utility's cost of service.

ii) The costs of developing new business ventures are charged to and recovered from the NRB.

iii) The accounting costs are transparent and fully recover costs for all services, including overhead, space, employee benefits, inconvenience, and a profit margin where appropriate. If the service provided by the utility to the related-NRB could also be obtained from an independent supplier, the price paid by the related-NRB to the utility should be no less than the competitive market price.

iv) The financial costs of each business are borne by the business. In the exceptional case where the utility provides guarantees, it must be given financial compensation.

All parties appeared to recognize that if the Commission were to allow utility affiliated NRBs to use utility facilities or services, a transfer pricing policy governing these transactions is required. BC Gas stated that ensuring an equitable return to the utility for any services provided, providing appropriate protection to ratepayers and preventing any unfair competitive advantage from being conferred on the related-NRB should be the prime considerations with regard to structuring such a policy. However, BC Gas also argued that the specific components of the transfer pricing policy should be established on an NRB-specific basis to reflect individual circumstances rather than as a blanket policy designed to apply to all circumstances. Accordingly, BC Gas suggested that, in this process, the Commission should establish a general framework to ensure that these goals were met but develop more specific rules when specific applications were brought forward. BC Gas also argued that the transfer pricing policy should specify that there would be periodic reviews for compliance. This was echoed by MCABC, which called for periodic reviews of transactions between the utility and its NRBs.

WKP argued that the transfer pricing policy should simply ensure that the incremental operating cost of non-regulated activities are not reflected in the utility's cost of service. Further, WKP stated that the price at which facilities or services were priced to the NRB should be at their incremental cost of provision. Although the staff position paper contemplated that facilities and services would be charged at the full embedded cost of the facility or service, WKP argued that there was no economic reason to price at anything more than incremental cost. Indeed, WKP argued that to price services above incremental costs would result in ratepayers benefiting at the expense of the NRB customer.

PNG also suggested that the charge which the NRB paid should be based on the incremental or marginal cost of providing the service but added that the charge should also include some return for the utility ratepayer. In this way, PNG argued that the benefits of sharing services or facilities would accrue to both the NRB and the utility rather than going entirely to the utility.

Kanelk indicated that it supported the transfer pricing policy although it suggested that if ratepayers were bearing none of the risks of the non-regulated activities, they should reap none of the rewards. In addition, Kanelk rejected the position that NRBs must be financed separately from the utility, suggesting that this could result in a sub-optimal corporate structure which could adversely affect a utility's ability to compete in the market.

Enron, who had argued that NRBs should be stand-alone except under exceptional circumstances, argued that utilities and their NRBs should be permitted to share overhead administrative services to the extent that such sharing does not allow the exchange of market-sensitive information.

4.5 Code of Conduct

The staff position paper suggested that the utility and its NRB must comply with a Commission-approved code of conduct. The paper suggested that each utility develop its own code of conduct to reflect its particular circumstances and unregulated market offerings, but that all codes should cover employment of utility personal, including career training and development, procedures for contracting for utility services (sharing and costing of resources), treatment of confidential information (management and employees), inter-company procurement and review of information (accounting, allocation and reporting). The policy should also ensure that no financial risk from the unregulated activities accrues to the utility. Specifically, sufficient safeguards should be put in place to protect utility ratepayers from any liability associated with the unregulated activity.

Specific suggestions for inclusion in the code included the following:

i) The regulated company will not provide to the NRB any market-sensitive or confidential information that would inhibit a competitive energy services market from functioning. If customers agree to the release of customer information, it should be provided to anyone for a price based on non-discriminatory access to the information.

ii) No regulated company personnel will state or imply that favoured treatment will be available to customers of the company as a result of using any service of an NRB.

iii) No regulated company personnel will preferentially direct customers seeking competitively offered services to an NRB.

iv) The regulated company will formally advise all employees of expected conduct related to these principles and it will undertake to perform periodic audits of the relationships to ensure compliance with these principles.

v) Complaints by non-affiliated parties about the application of these principles, or any alleged breach thereof, will be brought to the immediate attention of the senior management of the regulated company and subsequently a report of the complaints, and action taken, will be filed with the Commission.

vi) The financing of the utility and NRB will be accounted for entirely separately with the financing costs reflecting the risk profile of each entity.

vii) NRBs will not be allowed to use the utility name as the primary identifier of the company, but can make reference to the name of its parent company on letter head, advertisements, etc.

In those cases where retail customers have direct market access to the commodity, the utility's code of conduct will also include the following provision.

viii) The regulated company will treat all requests for distribution system access for the purpose of direct commodity marketing equitably and according to the requirements approved for direct commodity marketing in British Columbia.

Several parties had comments with respect to the code of conduct. PNG stated that the relationship between utilities and NRBs should be governed by a set of rules which ensure that there is no cross-subsidization between the utility and the NRB and that there is no unfair competition. However, PNG stated that these rules should not preclude the NRB from offering a complete menu of energy solution services.

BC Gas stated that the code of conduct must outline the utility's relationship with its unregulated businesses, including the transfer of information and the provision of resources, that it should ensure the minimization of risks to ratepayers, and that it should ensure that no unfair advantages are created for the NRB. However, BC Gas indicated that these rules may need modification during transition periods and that the level of information sharing between the utility and the NRB should reflect specific circumstances.

Westcoast argued that concerns about cross-subsidization should be dealt with through cost allocation and pre-determined transfer pricing guidelines. In addition, Westcoast argued that rules for affiliated NRBs should not prohibit the affiliated NRB from offering a comprehensive package of services since, to do otherwise, implies customers are precluded from the benefits of a bundled service.

HVCI expressed concern that the staff position paper contemplated each utility writing its own code of conduct. HVCI appeared to be concerned that this would be done without Commission input and that each utility would control what the code of conduct allowed. Enron suggested that the code of conduct should be developed by a working group of all interested parties and that the Commission should set a deadline for its development.

With respect to the first item in the suggested code of conduct, governing the flow of information, Kanelk suggested that it be amended to state that the regulated company will provide confidential information to a third party if requested to do so by the customer, without necessarily making the information available to other third parties. In addition, Kanelk suggested that the utility be allowed to recover the costs of doing so. Enron indicated that the code should include provisions which state that a regulated company should not provide any market information to the NRB unless that information is made available on comparable terms, in terms of price and timing, to other market participants. In contrast, WKP suggested that the code of conduct should only include a statement as to the privacy of the customer information, a statement as to

who shall have access to the information, and the fee to be charged to affiliates or any other party requesting such information.

With respect to the second item, that no regulated company personnel will state or imply that favoured treatment will be given if a customer does business with a utility NRB, Enron argued that the code should include a prohibition from condoning or acquiescing in any other person stating or implying that favoured treatment will be available to customers of the regulated company as a result of the customer using any service of, or conferring any benefit directly or indirectly on, an NRB. In addition, Enron stated that the third item in the suggested code, that no regulated company personnel will preferentially direct customers seeking competitively offered services to an NRB, should be modified to state that if a customer or potential customer requests from the regulated company information about products or services offered by an NRB or its competitors in downstream markets, the regulated company may provide such information, including a directory of retailers of the product or service, but shall not promote any specific retailer in preference to any other retailer.

Several parties suggested revisions with regard to the complaint procedure described in the staff position paper. CACBC (B.C.) et al. stated that the code should make provision for periodic reviews with the results forwarded automatically to the Commission. Enron suggested that the code of conduct must be effective and enforceable and expressed doubt that Section 124(4) of the Utilities Commission Act, which allows the Commission the power to impose a penalty of up to $10,000 for failure to comply with a direction of the Commission made under the Act, contained the appropriate or sufficient penalty. Enron suggested that, if the code of conduct were breached, an appropriate penalty would be the loss of use of utility resources for some specified period of time. Enron also argued that the Commission must review and rule on any complaints concerning violations of the code. BC Gas suggested that all complaints should be forwarded to the Commission which will then forward such complaints to the appropriate utility for resolution. BC Gas also argued that flexibility with respect to penalties for non-compliance with the code was needed and that there should not be one penalty for all code violations.

As indicated earlier, Kanelk rejected the position that non-regulated businesses must be financed separately from the utility since they believed this could result in a sub-optimal corporate structure which could adversely affect a utility's ability to compete in the market. However, Enron suggested that the code be expanded to prohibit cross-guarantees or any other form of financial assistance whatsoever being provided directly or indirectly by a utility to its NRB

Significant discussion revolved around the use of the utility name by NRBs. All utilities argued that the right to use the utility name belonged to the shareholders of the utility who had the right to use it as they wished. WKP stated that the value of the name arose from the goodwill with which the company was regarded. As customers do not pay for goodwill in rates, WKP argued that the value of the name accrued

solely to shareholders. Westcoast provided a similar argument. In addition, Westcoast maintained that name recognition was not an unfair advantage.

CACBC (B.C.) et al. agreed that NRBs should be allowed to use the utility name since they viewed this as providing information which customers would value. However, they maintained that the NRB should pay for the privilege since the goodwill associated with the name belonged to the utility. If the NRB did not pay for the use of the name, they maintained that this would amount to transferring a valuable asset to the NRB without any compensation. They suggested that independent evaluations be done to establish the value of any particular utility name.

HVCI took a similar position, arguing that the goodwill associated with the use of the utility name arose from items for which ratepayers, through the utility, had paid, including institutional advertising and charitable contributions. HVCI characterized the use of the utility name as a soft but effective cross-over benefit which is inconsistent with the spirit of fair competition. Further, they argued that if the utility were allowed to charge the NRB for the use of the name, the name should be made available to anyone who wished to purchase it.

MCABC also argued that NRBs should not be allowed to use the utility name. They argued that assets, acquired under regulation, are not the exclusive property of the company and shareholders but the shared assets of both the company and the broader shareholders, the rate-paying public. In particular, they argued that the name was an asset of the utility and that the assets of the utility belonged to ratepayers since the assets had been paid for through rates. Further, they argued that the fact that NRBs wanted to use the utility name implied that NRB participation is not viable without it.

With respect to the last item in the proposed code of conduct, that the regulated company will treat all requests for distribution system access for the purpose of direct commodity marketing equitably and according to the requirements approved for direct commodity marketing in B.C., Enron argued that 'equitably' should be defined as follows:

1. A utility must apply any tariff provision relating to utility service in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.

2. A utility must strictly enforce a tariff provision for which there is no discretion in the application of the provision.

3. A utility may not, through a tariff provision or otherwise, give its marketing affiliates or customers of affiliates, preference over non-affiliated companies or customers in matters related to utility service including, but not limited to, scheduling balancing metering, storage, standby service, or curtailment policy.

4. A utility must process all similar requests for utility (service) in the same manner and within the same time period.

In addition to comments on the items in the proposed code of conduct, some parties suggested certain additions. CACBC (B.C.) et al. suggested that the code provide more specific guidance. For example, they argued that the code should include a prohibition of routine movements of personnel between utilities and NRBs by way of transfers or promotions. In addition, Enron stated that the code should require separation of the operating personnel of the NRB from the operating personnel of the utility to the maximum extent possible.

4.6 Other Issues

Certain parties, such as Novagas Clearinghouse Ltd., stated that the commodity function should be removed from the utility since provision of the commodity is not a natural monopoly.

5.0 COMMISSION GUIDELINES WITH RESPECT TO UTILITY OR NRB PARTICIPATION IN DOWNSTREAM RETAIL MARKETS

5.1 Use of Utility Assets and Services in the Downstream Retail Market

5.1.1 Jurisdiction

Based on the submissions received as well as the legal opinion sought by staff, the Commission understands its jurisdiction with respect to the use of utility assets and services to provide unregulated goods and services to be as follows.

The Commission does not have the power to control the activities or to determine what services an NRB will provide if the NRB is a self-financing, stand-alone, arm's length affiliate using no resources of the utility.

The Commission has the jurisdiction to regulate the relationship between a public utility and an affiliated NRB to the extent that the relationship affects ratepayers. The Commission may implement a transfer pricing policy to regulate the interface between the utility and the NRB or may prohibit a utility from providing an NRB with any utility assets and services if, in the Commission's judgment, this is required to protect ratepayers.

The Commission has the jurisdiction to prohibit a public utility from participating in retail markets downstream of the meter if prohibition is the only reasonable and effective means by which the Commission can mitigate or alleviate any negative effects on ratepayers. In this case, the parent corporation of the utility may still decide to create a subsidiary NRB to participate in the retail market downstream of the meter. Alternatively, the Commission may implement a transfer pricing policy to

regulate the interface between the regulated and unregulated activities of the utility if in the Commission's opinion this provides ratepayers with sufficient protection.

The Commission supports the general position of staff that determinations regarding the extent and manner in which utility assets and services may be used to provide goods and services to the downstream retail market should be made on a basis which takes into account individual circumstances. However, it is clear from the submissions received and the legal opinion that certain changes to the specific objectives, criteria and principles initially proposed by staff are needed. The objectives, criteria and principles which the Commission intends to use to guide its determinations regarding the extent to which utility assets and services may be used to provide goods and services to the downstream retail market are outlined below.

5.1.2 Objectives

Based on the information received, it is clear that the Commission has jurisdiction to consider the first two objectives given in the staff position paper when considering the extent to which utility assets and services may be used to provide goods and services to the downstream retail market. Conversely, the Commission finds that it has no jurisdiction to consider the impacts of the use of utility assets and services, either directly or through NRBs, on the retail market downstream of the meter. Accordingly, the fourth staff objective, that customer choice should be maximized, and the additional objective proposed by Enron, that robust competition in downstream markets should be preserved and enhanced, are beyond the responsibilities of the Commission in making its determinations.

With respect to the third objective identified by staff, that the most efficient allocation of goods and resources should be sought, the Commission believes that this forms a proper part of its consideration, but only to the extent that ratepayers are affected. Accordingly, the Commission believes that it may consider whether a proposal would enhance or reduce the possibility of stranded utility assets, or otherwise increase the economic efficiency with which utility assets are used for the benefit of ratepayers, but may not consider the implications for economic efficiency with respect to the larger market. The Commission accepts the concern voiced by some parties that a precise measurement of economic efficiency is not possible, particularly when considered from a societal perspective, but expects that it is possible to determine directionally whether a particular proposal enhances or reduces the likelihood of stranded costs or otherwise provides benefits to ratepayers.

Accordingly, the objectives which will guide the Commission's determinations with respect to utility and NRB participation in the retail market downstream of the meter are as follows.

Figure 6: Commission Objectives

There must be no subsidy of unregulated business activities, whether undertaken by the utility or its NRB, by utility ratepayers.
The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is the risks must have no impact on utility ratepayers.
The most economically efficient allocation of goods and resources for ratepayers should be sought.

In addition, the Commission agrees with staff that greater achievement of one objective may require a lesser achievement of another objective so that trade-offs may be required. The Commission will be the sole arbiter of how the trade-off between objectives should be made in determining the extent and manner in which utility services and assets may be used to participate in the retail market downstream of the utility meter.

5.1.3 Criteria

With regard to the six criteria proposed by staff, the Commission has concluded that they should be revised as follows.

i) Does a natural monopoly currently exist for the good or service?

ii) If the good or service is not a natural monopoly, can the utility ratepayer be sufficiently protected through a transfer pricing policy mechanism if either a division of the utility or a related-NRB offers the good or service?

iii) Will the use of utility assets or services in the provision of the good or service reduce the risk of utility assets being stranded to the detriment of ratepayers or otherwise provide benefits to ratepayers?

In coming to the conclusion that staff criteria three, five and six should not form a basis for its determinations, the Commission finds that it has jurisdiction to consider the impacts, either positive or negative, of the use of utility assets or services in the provision of goods to the downstream retail market, only with respect to utility ratepayers. If the new service is to be provided within the utility, the Commission will consider the appropriateness of this service within the mandate of the public utility.

5.1.4 Principles

Based on its analysis of the submissions, the Commission determines that principle six, that in all cases the Commission should consider the long-term effects on the markets of utility or related-NRB provision of unregulated goods and services, falls outside of its jurisdiction. Similarly, the Commission accepts that the principles must be revised to exclude references to considerations of customer choice.

Accordingly, the Commission accepts that the following principles should govern the choice of corporate structure.

i) If a natural monopoly exists for the good or service, it should be provided as a regulated tariff item (Corporate Structure 1 in Figure 4).

ii) Utility participation in the unregulated downstream market by completely stand-alone NRBs using no utility resources is the preferred option since it provides the maximum protection to utility ratepayers (Corporate Structure 4 in Figure 4). Variations from this option should be undertaken only when it can be shown that this option would result in substantial stranded costs for the utility and/or that a transfer pricing policy mechanism will act to provide sufficient protection for ratepayers.

iii) The onus should always be on the utility to prove that the benefits associated with use of utility resources are sufficient to warrant the changed structure and that the transfer pricing policy mechanism will provide sufficient protection to ratepayers.

iv) If the Commission decides to allow the use of utility resources in the provision of the unregulated good or service, the preferred option is through a related-NRB (Corporate Structure 3 in Figure 4). Direct participation by the utility in the provision of an unregulated good or service should be allowed only when the costs associated with forcing the provision through the related-NRB structure would significantly offset the benefits associated with the use of the utility's resources and it can be shown that a transfer pricing policy mechanism will provide sufficient protection for ratepayers (Corporate Structure 2 in Figure 4).

v) Utilities and their related-NRBs will be encouraged to move unregulated products which use utility resources into stand-alone NRBs as soon as market conditions warrant (Corporate Structure 4 in Figure 4). When a utility-provided product is moved to an NRB, the NRB will be required to pay fair market value to the utility for the assets, including goodwill, associated with the product. In addition, utilities will be required to provide periodic proof that the benefits associated with the use of utility services continue to exist and that ratepayers continue to be sufficiently protected. The Commission will make directions to prohibit the use of utility assets and services in the provision of goods and services downstream of the retail market at any time that it finds it in the interests of ratepayers to do so.

5.2 Transfer Pricing Policy

As indicated above, the Commission's jurisdiction with respect to the extent to which utility assets and services can be used to provide goods and services in the downstream retail market is centred on the protection of ratepayers. Accordingly, the Commission is convinced that any transfer pricing policy must ensure that ratepayers are kept harmless from any excursion by the utility, either directly or indirectly, into the downstream retail market.

The Commission has concluded that the four components of a transfer pricing policy outlined in the staff position paper are essential. In addition, the Commission agrees with groups such as MCABC that the transfer pricing policy should include a requirement for periodic reviews of transactions between a utility and its NRBs.

The Commission does not agree with parties, such as WKP, who argued that the price at which utility assets or services are charged to the NRB should reflect the incremental cost of provision only. These services have value and the NRB should expect to pay for that value. To do otherwise would mean that all the benefits of shared services accrues to the NRB. Accordingly, the Commission concludes that the provision in the staff paper with respect to pricing of assets and services is appropriate.

Generally, costing should recover the fully allocated cost or the incremental cost, whichever is higher. This will ensure that ratepayers will benefit or are not harmed by the transaction. Where the incremental costs are lower than the fully allocated cost, ratepayers should receive a value by pricing above the fully allocated cost towards a market price for the service. In this latter instances, the Commission will need to consider if such services should be provided to all competitors or to the NRB exclusively.

The Commission is not convinced by the argument that the specific components of the transfer pricing policy should be established on an NRB-specific basis to reflect individual circumstances rather than as a blanket policy designed to apply in all circumstances. Although the Commission accepts that there may be provisions required for a gas utility that may not be required for an electricity utility, or vice versa, the Commission will be reluctant to approve any transfer pricing policy which deviates significantly from that which the Commission believes provides the most protection to ratepayers. In all cases, the burden will lie with the utility to prove that deviations are appropriate.

Accordingly, the Commission concludes that a utility's transfer pricing policy should ensure the following:

i) The operating costs of non-regulated activities are not reflected in the utility's cost of service.

ii) The costs of developing new business ventures are charged to and recovered from the NRB.

iii) The accounting costs are transparent and will normally fully recover for all services, including overhead, space, employee benefits, inconvenience, and a profit margin where appropriate. If the service provided by the utility to the related-NRB could also be obtained from an independent supplier, the price paid by the related-NRB to the utility should be no less than the competitive market price and will never be below the incremental cost.

iv) The financial costs of each business are borne by the business. In the exceptional case where the utility provides guarantees, it must be given financial compensation.

v) Utilities will be required to file periodic reports which demonstrate that they are adhering to the transfer pricing policy. The form and timing of the report will be determined by the Commission.

The Commission will require utilities to bring forward for approval proposed transfer pricing policies at the time they bring forward any application to use utility assets or services in the provision of unregulated goods and services in the downstream retail market.

5.3 The Code of Conduct

In order to protect ratepayers, the Commission will require each utility to bring forward for approval a code of conduct for the relationship between the utility and its NRBs or the utility and any division within the utility which offers unregulated goods or services, at the time the utility brings forward any application to use utility assets or services in the provision of unregulated goods and services.

As with the transfer pricing policy, the Commission is convinced that any code of conduct must ensure that ratepayers are kept harmless from any excursion by the utility, either directly or indirectly, in the downstream retail market. Accordingly, the Commission generally does not accept the argument that the code of conduct should be modified during transition periods and that the level of information sharing between the utility and the NRB should reflect specific circumstances. Although the Commission can envision some circumstances in which such a relaxation of the code might be possible without jeopardizing ratepayers, in these circumstances, the burden of proof that such exceptions are justified will lie with the utility. Further, the justifications must lie within the Commission's jurisdiction to consider. In the absence of sufficient evidence by the utility, no relaxation of the code will be allowed.

Many suggestions were received with respect to the specific elements which should be included in the code of conduct. Much of this debate centred around the use of the utility name by NRBs. The Commission is concerned that the use of the utility name by related-NRBs could interfere with the Commission's responsibility to protect ratepayers. The Commission will likely have to rule on this matter on a case by case basis considering the related-NRB function, the potential impact on ratepayers (including confusion between regulated and non-regulated services) and the services provided by the utility at rates to be determined by the Commission.

Based on all the submissions provided, the Commission determines that the code of conduct principles contained in the staff position paper should be modified as follows:

i) The regulated company will not provide to the NRB any market-sensitive or confidential information that would inhibit a competitive energy services market from functioning. If customers agree to a release of customer information to the NRB, it should be provided to other market participants under the same terms and conditions and for the same price. Should an individual customer make a specific request to have information released to a particular third party, it will be released to that party only. The utility will be able to recover from the customer the costs associated with the provision of this information.

ii) No regulated company personnel will state or imply that favoured treatment will be available to customers of the company as a result of using any service of an NRB. In addition, no regulated company personnel will condone or acquiesce in any other person stating or implying that favoured treatment will be available to customers of the company as a result of using any service of an NRB.

iii) No regulated company personnel will preferentially direct customers seeking competitively offered services to an NRB. If a customer, or potential customer, requests from the regulated company information about products or services offered by an NRB or its competitors in downstream markets, the regulated company may provide such information, including a directory of retailers of the product or service, but shall not promote any specific retailer in preference to any other retailer.

iv) The regulated company will formally advise all employees of expected conduct related to these principles and it will undertake to perform periodic audits of the relationships to ensure compliance with these principles. These audits will be performed no less than once a calendar year and filed with the Commission.

v) Complaints by non-affiliated parties about the application of these principles, or any alleged breach thereof, will be brought to the immediate attention of the senior management of the regulated company and subsequently a report of the complaints, and action taken, will be filed with the Commission. The report will be filed with the Commission within one month of the complaint being made.

vi) The financing of the utility and NRB will be accounted for entirely separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided directly or indirectly by a utility to its NRB without approval of the Commission.

vii) Use of the utility name by a related-NRB will require approval by the Commission to ensure that its use will not interfere with the Commission's ability to protect ratepayers.

In those cases where retail customers have direct market access to the commodity, the utility's code of conduct will also include the following provision.

viii) The regulated company will treat all requests for distribution system access for the purpose of direct commodity marketing equitably and according to the requirements approved for direct commodity marketing in British Columbia.

5.4 Other Issues

At this time, the Commission does not intend to address the issue of whether the commodity function should be removed from the utility. Nothing contained in this paper should be interpreted to imply that the commodity function should be removed.

With respect to the request by MCABC to nullify the 1988 agreement between Inland Natural Gas and its successors and MCABC, regarding appliance sales, the Commission will pursue this matter separately from this policy paper.

List of Initial Responses to Commission Staff Paper

1. Association for the Advancement of Sustainable Energy Policy
2. BC Gas Utility Ltd.
3. British Columbia Hydro and Power Authority
4. British Columbia Public Interest Advocacy Centre
5. Brian Donnelly
6. Building Owners and Managers Association
7. City of New Westminster
8. Consulting Engineers of British Columbia
9. Enron Capital and Trade Resources Canada Corp.
10. Heating, Ventilating and Cooling Association of B.C.
11. International Brotherhood of Electrical Workers - Local 213
12. Kanelk Transmission Company Limited
13. Mechanical Contractors Association of B.C.
14. Northwest Pacific Energy Marketing Inc.
15. Novagas Clearinghouse Ltd.
16. Pacific Northern Gas Ltd.
17. Pan Alberta Gas
18. Radian Mechanical Inc.
19. Residential Hot Water Heating Association of B.C.
20. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, Local Union 170
21. West Kootenay Power Ltd.
22. Westcoast Energy
23. Westcoast Seismic Protections Co. Ltd.
24. Willis Energy Service

List of Reply Comments to Initial Responses

1. BC Gas Utility Ltd.
2. British Columbia Hydro and Power Authority
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4. Enron Capital and Trade Resources Canada Corp.
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6. West Kootenay Power Ltd.