

**Direct Energy Regulated Services, a Business Unit of Direct  
Energy Marketing Limited**

**Inter-Affiliate Code of Conduct and Compliance Plan**

**August 19, 2021**



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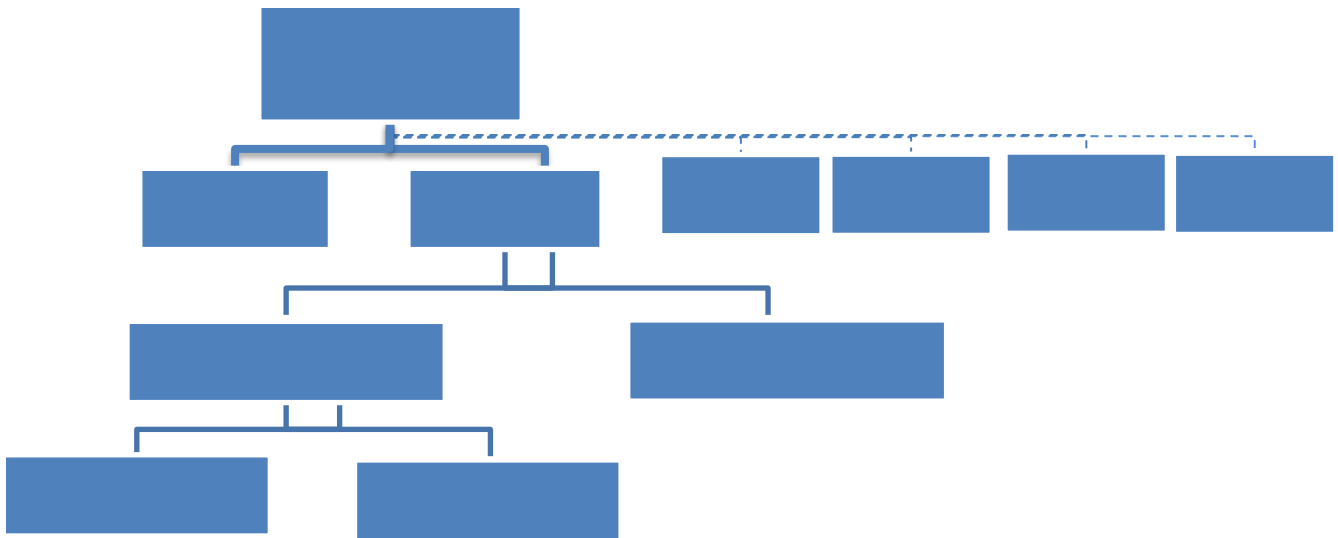
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## **DIRECT ENERGY REGULATED SERVICES**

### **INTER-AFFILIATE CODE OF CONDUCT AND COMPLIANCE PLAN**

In Decision 2957-D01-2015, the Alberta Utilities Commission (“Commission”) recognized the interrelationships among Direct Energy Limited Partnership (“DELP”), Direct Energy Marketing Limited (“DEML”) and Direct Energy Regulated Services (“DERS”), a business unit of DEML, and the fact that DEML’s business units provide both regulated and unregulated services. The Commission directed DERS

Figure 1: Abbreviated Corporate Organizational Chart



This IACC & CP describes certain obligations and responsibilities of specified DERS and DELP management personnel. Notwithstanding this, and without otherwise reducing or eliminating the obligation and responsibility of the specified DERS and DELP management personnel to ensure any specific requirements of this IACC & CP are satisfied, it is understood that all or a portion of the tasks described in this IACC & CP may be delegated by the specified DERS or DELP management personnel to other DERS or DELP personnel, respectively.

Questions or comments concerning the IACC & CP should be directed to DERS' Compliance Officer at [canadianapprovals@directenergy.com](mailto:canadianapprovals@directenergy.com).

Copies of this IACC & CP are available at [www.directenergyregulatedservices.com](http://www.directenergyregulatedservices.com).

## 1. **PURPOSE AND OBJECTIVES OF THE CODE**

### 1.1. **Purpose of the Code**

The purpose of this Code is to establish standards and conditions for interaction between DERS and its 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.

## **1.2. Objectives of the Code**

While the overall purpose of the Code is to establish standards and parameters which prohibit inappropriate Affiliate conduct, preferences or advantages, which may adversely impact the customers of regulated businesses, this purpose reflects several important underlying objectives, including:

- a. creating a clearly defined set of rules designed to enhance inter-





- i. **“Compliance Report”** shall have the meaning ascribed thereto in section 7.6 hereof.
- j. **“Compliance Training Material”** means the material developed by the Compliance Officer which will be used to ensure that all officers, employees, agents and contractors of DERS and DELP, to the extent DELP employees interact with the Utility, are familiar with the provisions of the IACC & CP. At a minimum, the material will include instructions on:
  - i. impartial application of the DERS tariff
  - ii. e

- o. “**DERS**” means Direct Energy Regulated Services, a business unit of Direct Energy Marketing Limited.
- p. “**DERS Affiliates**” means any entity to which the Code applies pursuant to section 2.3 hereof.
- q. “**Fair Market Value**

- y. **“Services Agreement”** means an agreement entered into between the 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.
- z. **“Shared Service”** means any service, other than a Utility Service or a For Profit Affiliate Service, provided on a Cost Recovery Basis by the Utility to an Affiliate or by an Affiliate to the Utility.
- aa. **“Subsidiary”** shall have the meaning ascribed thereto in section 2(4) of the

### **2.3. To Whom This Code Applies**

DERS is obligated to comply with this Code and all Affiliates of DERS are obligated to comply with the Code to the extent they interact with the Utility.

### **2.4. Coming into Force**

This Code comes into force when approved by the Commission, provided however that, to the extent existing agreements or arrangements are in place between parties to whom this Code applies that do not conform with this Code, such agreements or arrangements must be brought into compliance with this Code within 90 days following approval by the Commission.

### **2.5. Amendments to this Code**

This Code may be reviewed and amended from time to time by the AUC 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 AUC 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 AUC**

Although this Code has been approved by the AUC, such approval does not detract from, reduce or modify in any way, the powers of the AUC to deny, vary, approve with conditions, or overturn, the terms of any transaction or arrangement between the Utility and one or more Affiliates that may be done in compliance with this Code. Compliance with the Code does not eliminate a specified period of time, or 3(n)30324



### 3.1.5. *Guiding Principle*

**Policy:** 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 the 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



Compliance Officer will receive a list of users with approved access to computer systems containing Confidential Information, (the “Shared Information Systems Access List”).

2. The Compliance Officer will annually review the Shared Information Systems Access List for all Information Services shared with DELP. The Compliance Officer will annually review with the owners of systems containing Confidential Information, the list of DELP employees that have access to their system.
3. The Compliance Officer will annually review the data management and data access protocols and contractual provisions regarding the breach of any access protocols to ensure they are appropriate.
4. The Compliance Officer will provide a signed certificate in the form attached as Schedule “B” to this Plan (the “Shared Access Compliance Certificate”), within 90 days of the end of each calendar year. The certificate attests that all Information Services shared with DELP were reviewed and that all access by DELP to Information Services is in accordance with section 3.2.3 of the Code.
5. The Compliance Officer will maintain a record of the approvals and certificate for six years. Any failure to provide the approvals or certificate as described in paragraph 1 and 3 above, or the provision of the approvals or certificate which do not demonstrate adherence to the Code will be treated as an inquiry under the Code (see Section 8 of this Plan).

#### **3.2.4. *Financial Transactions with Affiliates***

**Policy:** The Utility shall ensure that any loan, investment, or other financial support provided to an Affiliate is provided on terms no more favorable than what that Affiliate would be able to obtain as a stand-alone entity from the capital markets.

**Compliance Measures:**

1. DERS does not provide any loans, investment or other financial support to DELP. If this arrangement changes





a view to making any necessary adjustments to ensure that the Utility and its Affiliates each bear their proportionate share of costs.

### **Compliance Measures**

1. All new or revised Shared Services will be documented by a Services Agreement.
2. Prior to providing a Shared Service, the Services Agreement will be prepared by the appropriate DERS employee and presented to the IACC CPC for review and approval.
3. The Compliance Officer will maintain an inventory of all Shared Services obtained from or provided to DELP.
4. The Shared Services will be annually reviewed by DERS' representatives prior to year end and by the IACC CPC within 90 days of the end of each calendar year. The results of the review will be reflected in the minutes of the IACC CPC's meeting. Any Shared Service which no longer meets the test of continued prudence will be revised or terminated in accordance with the terms of the Services Agreement.

#### **3.3.5. *Services Agreement***

**Policy:** The Utility shall enter into a Services Agreement with respect to any Shared Services it provides to, or acquires from, an Affiliate.

### **Compliance Measures**

Please see Section 3.3.4.

#### **3.3.6. *Occasional Services Permitted***

**Policy:** Where the Utility has otherwise acted prudently, the 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.

### **Compliance Measures**

1. DERS' Finance Team will ensure that all Occasional Services provided to, or received by DELP are provided on a Cost Recovery Basis, and are documented by way of an approved work order, purchase order, or similar instrument.
2. DERS' Finance Team will provide a signed certificate in the form attached to this Plan as Schedule "B", and an annual report of Occasional Services provided by DERS to DELP and vice versa (the "Occasional Services Report"). The "Occasional Services Report" will indicate whether the services have been provided on a Cost Recovery Basis and have been

properly documented. The certificate and “Occasional Services Report” will be provided to the Compliance Officer within 90 days of the end of each calendar year.

3. The IACC CPC will review the “Occasional Services Report” prior to filing the annual Compliance Report. The minutes of the meeting at which the report is reviewed will reflect

## **4. TRANSFER PRICING**

### **4.1. For Profit Affiliate Services**

**Policy:** Where the 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 the 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.

The Utility shall periodically review the prudence of continuing For Profit Affiliate Services arrangements.

#### **Compliance Measures:**

1. All existing, new or revised For Profit Affiliate Services will be documented by a Services Agreement, duly executed by DERS employees with the appropriate signing authority.
2. Prior to implementing a new or revised For Profit Affiliate Service to receive services from DELP, the For Profit Affiliate Service agreement will be reviewed and approved by the IACC CPC. A business case identifying that it is prudent to obtain the For Profit Affiliate Service will be prepared if the annual value of the For Profit Affiliate Service is estimated to be greater than \$50,000. The business case must contain adequate evidence (on a net present value basis appropriate to the life cycle or operating cycle of the services involved) to conclude that the decision to out-source is the lowest cost option for customers, and that the For Profit Affiliate Services have been acquired at a price which is no more than Fair Market Value. Fair Market Value will be determined in a manner consistent with Section 4.5 of the Code. The business case will be presented to the IACC CPC for review and approval.
3. Prior to implementing a new or revised For Profit Affiliate Service to provide services to DELP, the Services Agreement, and a description of the process used to determine that the For Profit Affiliate Service is to be provided at a price which is no less than Fair Market Value will be reviewed and approved by the IACC CPC. Fair Market Value will be determined in a manner consistent with Section 4.5 of the Code.
4. The Compliance Officer will maintain an inventory of all For Profit Affiliate Services obtained from, or provided to DELP. On a quarterly basis, the Compliance Officer will prepare a report describing all For Profit Affiliate Services obtained from, or provided to an Affiliate and will maintain a record of the above reports for six years.
5. The For Profit Affiliate Services between DERS and DELP will be annually reviewed by DERS' representatives prior to year end and by the IACC CPC within 90 days of the end of



**Compliance Measures:**

1. DERS' Finance Team will approve any asset transfers, mortgages, leases, or other dispositions by DERS to DELP, or by DELP to DERS, and will ensure that such asset transfers are at Fair Market Value, subject to the provisions of Section 4.6 of the Code.
2. DERS' Finance Team will provide a signed certificate in the form attached to this Plan as Schedule "B", and an annual report detailing any asset transfers between DERS and Affiliates (the "Asset Transfers Report"). The "Asset Transfers Report" will describe the manner in which the asset transfers were determined to be at Fair Market Value, subject to the provisions of Section 4.6 of the Code. The certificate attached to the Code "

## 5. EQUAL TREATMENT WITH RESPECT TO UTILITY SERVICES

### 5.1. Impartial Application of Tariff

**Policy:** The 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.

**Compliance Measures:**

1. DELP does not operate in Alberta and accordingly, compliance measures are inapplicable in this regard. If this arrangement changes, DERS will update the IACC & CP as required.

### 5.2. Equal Access

**Policy:** The 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.

**Compliance Measures:**

1. DELP does not operate in Alberta and accordingly, compliance measures are inapplicable in Alberta





**Compliance Measures:**

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#### 7.4. **Responsibilities of the Compliance Officer**

**Policy:** The responsibilities of the Compliance Officer shall include:

- a) providing advice and information to the Utility for the purpose of ensuring compliance with this IACC & CP;
- b) monitoring and documenting compliance with the IACC & CP by the Utility, its directors, officers, employees, consultants, contractors and agents;
- c)



- 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 Shared Employee Report;
- l) an Asset Transfers Report;
- m) 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;
- n) a summary list of any exemptions granted to this Code or exceptions utilized, including the exception for emergency services;
- o) a list of all employee transfers, temporary assignments and secondments between the Utility and its Affiliates, detailing specifics as to purpose, dates and duration of such employee movements; and
- p) 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.

Compliance Measures:

1. The Compliance Report will meet the requirements of section 7.6 of the Code as amended from time to time.

**7.7. Documents to be Provided to the AUC upon Request**

If required by the AUC, the Utility shall provide the AUC with a copy of any document referred to in a Compliance Report or other supporting records and material.



### **8.2.2. *Disposition***

**Policy:** 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

**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 the Utility or of an inappropriate transaction, expense or activity by the Utility. Non-compliance with the Code by the Utility shall subject the Utility to the full range of powers and authorities of the AUC. Non-compliance with the Code by a director, officer, employee, consultant, contractor or agent of the Utility may subject such individual to disciplinary action by the Utility.





## SCHEDULE B – COMPLIANCE REPORT

To: The DEML Compliance Officer and IACC Compliance Plan Committee

I, \_\_\_\_\_ of the City of \_\_\_\_\_, in the Province of Alberta, acting in my position for of DERS and not in my personal capacity, to the best of my knowledge do hereby certify as follows:

1. Section \_\_\_\_\_ of the DERS Inter-Affiliate Code of Conduct and Compliance Plan requires me to provide this Compliance Certificate for \_\_\_\_\_ on or before \_\_\_\_\_.
2. My position with DERS is \_\_\_\_\_, and as such I have conducted due inquiry of individuals who have personal knowledge of, the facts and matters herein stated.
3. For the period of \_\_\_\_\_ to \_\_\_\_\_, DERS has been in compliance with the requirements of Section \_\_\_\_\_ of the DERS Inter-Affiliate Code of Conduct and Compliance Plan.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **SCHEDULE C – DIRECTORS’ RESOLUTION**

**[DEML]**  
**(the "Corporation")**

**WHEREAS** the Corporation is subject to the oversight by the Alberta Utilities Commission, successor to the Alberta Energy and Utilities Board ("AUC"),

**AND WHEREAS** the AUC has imposed an Inter-Affiliate Code of Conduct and Compliance Plan on the Corporation, pursuant to Decision TBD-D01-2021 (the "IACC & CP");

**AND WHEREAS**