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Compliance Bulletin 200701

To: All Licensed Electricity Distributors

Re: Conservation and Demand Management Services

This Bulletin is intended to provide guidance to licensed electricity distributors in relation to the provision of electricity conservation and demand management (“CDM”) activities and compliance with various legal and regulatory obligations.

On July 13, 2006, the Minister of Energy issued a Directive to the Ontario Power Authority (“OPA”), directing the OPA to assume responsibility for coordinating the delivery and funding of CDM programs through distributors in Ontario. The Compliance Office has received inquiries regarding CDM activities and how these may be undertaken while remaining compliant with applicable legal and regulatory requirements.

There are two types of CDM activities that a distributor may undertake; namely, those approved by the Board and funded through distribution rates, and those funded from other sources such as the OPA. This Bulletin provides guidance to distributors on a number of issues associated with the conduct of CDM activities that are not funded through distribution rates.

Compliance with Legislation

Section 71(1) of the *Ontario Energy Board Act, 1998* (the “OEB Act”) states that a distributor shall not, except through one or more affiliates, carry on any business activity other than distributing electricity. When a distributor is undertaking CDM activities which are funded through Board approved distribution rates, those activities are

considered to be part of the business activity of distributing electricity. As such, these activities must be carried out in accordance with the legal and regulatory requirements applicable to all distribution business activities.

Section 71(2) of the *OEB Act*, and sections 5(2) and 5(3) of the *Definitions and Exemptions Regulation*, O. Reg. 161/99, provide an exemption which allows a distributor to undertake as a business activity, separate and apart from, the business of distributing electricity, the provision of services that are related to, among other things, the promotion of electricity conservation, clean energy and load management. Therefore it is my view that a distributor may also engage in the business of providing CDM activities that are funded from sources other than distribution rates. For example, a distributor may contract with the OPA to provide CDM services, including the installation of privately-owned equipment or billing for the delivery of CDM related products or services.

Disconnection and Provision of Billing Services

Distributors are reminded that the right to disconnect a customer for non-payment relates only to the non-payment of charges owing for the distribution or retail of electricity, or for a security deposit. In my view, a customer cannot be disconnected so long as the payment received by the distributor is sufficient to cover those charges. In such a case, it is not permissible for a distributor to disconnect a customer if the payment received is otherwise insufficient to cover charges owing for CDM products or services that are not funded through distribution rates.

In my opinion, distributors should ensure that any third party access to a regulated utility bill is provided on a non-discriminatory basis. Therefore, if a distributor engages in a CDM activity that involves the provision of billing services on behalf of a third party CDM provider, it should ensure that access is available to any party who requests it on the same terms and conditions.

Licensed Service Area

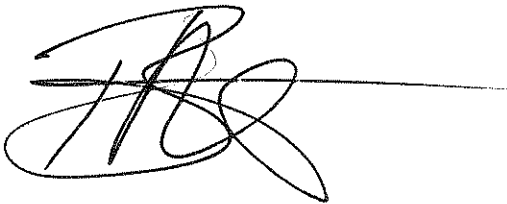
It is my view that, when engaging in CDM activities that are not funded through distribution rates, distributors are not limited to operating within their licensed service area. Distributors may assist the OPA with ensuring that all areas of the province have access to CDM programs, by offering to provide CDM services in the service area of another distributor either at the specific request of the other distributor or under contract with the OPA.

Compliance with the Affiliate Relationships Code for Distributors and Transmitters

Distributors are reminded that, regardless of the source of funding, if they subcontract the delivery of CDM programs to an affiliate, they must do so in a manner that is

compliant with the Affiliate Relationships Code for Distributors and Transmitters. Guidance regarding the requirements of that Code may be found in Compliance Bulletin 200604.

A distributor that is uncertain about whether its CDM activities are compliant with applicable legal and regulatory requirements should contact the Compliance Office to seek additional guidance. Inquiries should be directed through the Market Participant hotline at 416-440-7604 or by e-mail at market.operations@oeb.gov.on.ca.

A handwritten signature in black ink, appearing to be 'BH', with a long horizontal line extending to the right.

Brian Hewson
Chief Compliance Officer
Compliance Office

No statutory power of decision has been delegated to the Chief Compliance Officer, and the views expressed in this Compliance Bulletin are not binding on the Board. The Chief Compliance Officer may seek enforcement action by the Board under Part VII.1 of the *Ontario Energy Board Act, 1998* in relation to non-compliance.