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BULLETIN

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**TO: All Licensed Electricity Distributors
All Affiliates of Licensed Electricity Distributors, including
Clerks of Municipalities in Ontario
All Other Interested Parties**

**RE: Application of Section 80 of the *Ontario Energy Board Act, 1998* to the
Construction or Acquisition of Interests in Generation Facilities by
Distributors and their Affiliates**

This Bulletin provides guidance in relation to the application of section 80 of the *Ontario Energy Board Act, 1998* to the construction of, or acquisition of an interest in, a generation facility by an electricity distributor or its affiliate.

1. Background

Under section 71(3) of the *Ontario Energy Board Act, 1998* (the "Act"), electricity distributors are permitted to own and operate certain generation facilities. A [Compliance Bulletin](#) was issued on July 7, 2010 (the "2010 Bulletin") that provides guidance in relation to a number of issues associated with the application of section 71(3) of the Act.

Under section 144(2) of the *Electricity Act, 1998* (the "Electricity Act"), a municipal corporation is permitted to generate electricity by means other than through a corporation if the generation facility is of the type described in that section.

For convenience, the generation facilities that are referenced in sections 71(3) of the Act and section 144(2) of the Electricity Act are referred to in this Bulletin as “qualifying facilities”.¹

Section 80 of the Act requires distributors and their affiliates to give the Board advance notice of any proposal to construct or to acquire an interest in a generation facility. Specifically, the section states as follows:

No transmitter or distributor or affiliate of a transmitter or distributor shall acquire an interest in a generation facility in Ontario, construct a generation facility in Ontario or purchase shares of a corporation that owns a generation facility in Ontario unless it has first given notice of its proposal to do so to the Board and the Board,

- (a) has not issued a notice of review of the proposal within 60 days of the filing of the notice; or*
- (b) has approved the proposal under section 82.*

2. Application of Section 80 of the Act

As noted in the 2010 Bulletin, there is nothing in section 71(3) of the Act or the regulations made under the Act that expressly exempts licensed distributors from the requirement to give notice under section 80 of the Act in respect of a proposal to construct or acquire an interest in a qualifying generation facility. Similarly, there is nothing in section 144(2) of the Electricity Act or the regulations made under the Act that expressly exempts municipal corporations, if affiliated with a distributor, from the requirement to give notice under section 80 of the Act in respect of such a proposal.

Distributors are reminded that, if they intend to acquire an interest in, construct, or acquire shares of a company that owns, a qualifying generation facility, they must first give notice of their proposal to so to the Board. Board staff also reminds distributors that, as noted in the 2010 Bulletin, section 80 of the Act does not create any additional

¹ There are differences between these two sections in terms of the generation facilities that are captured. Those differences do not affect the discussion below.

right or authority, over and above that found in section 71(3), regarding the ownership and operation of generation facilities.

Likewise, if an affiliate of a distributor intends to pursue an activity or transaction identified in section 80 of the Act, the affiliate must first provide notice to the Board of its proposal to do so.

Notice under section 80 of the Act should be given using the Board's [Preliminary Filing Requirements for a Notice of Proposal under Sections 80 and 81 of the Ontario Energy Board Act, 1998](#). This is the form that has been approved under section 13 of the Act for use in respect of section 80 notices.

The Board does not have a current listing of the affiliates of all electricity distributors. Distributors are therefore asked to provide a copy of this Bulletin to all of their affiliates, including the Clerk of any Municipality that is an affiliate of the distributor.

The views expressed in this Bulletin are those of Board staff and are not binding on the Board.

Any enquiries regarding this Bulletin should be directed to the Board's Market Operations hotline, at 416-440-7604 or market.operations@ontarioenergyboard.ca.

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