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## COMPLIANCE BULLETIN

**DATE ISSUED: April 12, 2011**

**TO: All Licensed Electricity Distributors  
All Other Interested Parties**

**RE: Application of Section 73 of the *Ontario Energy Board Act, 1998* in respect of Street Lighting Services**

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**This Bulletin provides further guidance in relation to the application of section 73 of the *Ontario Energy Board Act, 1998* regarding the provision of street lighting services by affiliates of distributors, specifically in relation to the provision of those services outside of the affiliated distributor's licensed service area.**

### 1. Background

Section 73(1) of the *Ontario Energy Board Act, 1998* (the "OEB Act") restricts the activities that may be undertaken by an affiliate of a municipally-owned distributor. On November 5, 2010, Board staff issued a Compliance Bulletin (the "November Bulletin") regarding the application of section 73(1) of the OEB Act in respect of street lighting services. The view expressed by staff in the November Bulletin is that an affiliate of a

distributor is not precluded by section 73(1) of the OEB Act from providing street lighting services.

A question has been raised as to whether that view extends to the circumstance where an affiliate of a distributor is providing street lighting services outside of the affiliated distributor's licensed service area.

By its terms, the November Bulletin is not limited in its application to the provision of street lighting services within the affiliated distributor's licensed service area. However, Board staff considers it appropriate to address this particular issue, and, accordingly, this Bulletin sets out Board staff's views in that regard.

## 2. Application of Section 73 of the OEB Act

Board staff's view is that an affiliate of a distributor is not precluded by section 73(1) of the OEB Act from providing street lighting services outside of its affiliated distributor's licensed service area.

As noted in the November Bulletin, section 73(1) of the OEB Act establishes an exhaustive list of activities that affiliates of municipally-owned distributors may undertake. Board staff notes that section 73(1) of the OEB Act is silent as to the geographic area in which these permitted activities may be undertaken. Board staff also notes that, unlike licensed electricity distributors, their affiliates do not have licensed service areas that constrain the geographic scope of their activities.

As such, it is Board staff's view that, if and to the extent that an activity is permitted under section 73(1), an affiliate is permitted to undertake that activity both inside and outside of its affiliated distributor's licensed service area.

As stated in the November Bulletin, the provision of street lighting services by an

affiliate can be permitted under items 6 and 9 of section 73(1) of the OEB Act. For convenience of reference, relevant portions of the November Bulletin are reproduced here:

...In Board staff's view, street lighting services can be permitted under item 6; namely, business activities the principal purpose of which is to use more effectively the assets of the distributor or an affiliate of the distributor. In this regard, Board staff notes the following: ...

- iii. In some instances, the affiliate uses specialized equipment owned by the distributor for the purposes of providing street lighting services. A good example is bucket trucks. Use of such specialized assets, which have only a limited number of practical applications, by an affiliate for the provision of street lighting services makes more effective use of those assets. Similarly, where an affiliate acquires a specialized asset such as a bucket truck for use in a permitted activity under section 73(1), the subsequent use of that asset for the purposes of providing street lighting services makes more effective use of the asset.

In Board staff's view, the provision of street lighting services by an affiliate can also be permitted under item 9; namely, the provision of services related to the promotion of energy conservation, energy efficiency or load management. This would be the case to the extent that the street lighting services involve, for example, the installation and maintenance of more energy efficient lights. This would, among other things, also assist a distributor in meeting the conservation and demand management targets set out in its licence.

Board staff's views as set out in this Bulletin are based solely on a consideration of the provisions of the OEB Act. Board staff expresses no view as to the implications, if any, of municipal or other law on the scope of an affiliate's activities.

**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](mailto:market.operations@ontarioenergyboard.ca).**

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