

DISTRIBUTION SYSTEM CODE TASK FORCE

CHAPTER 9

**SUMMARIES OF RECOMMENDATIONS:
MONITORING AND ENFORCEMENT**

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9.1 THE MONITORING AND ENFORCEMENT ROLE OF DISTRIBUTORS

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Issue Statement

New legislation, regulations and Ontario Energy Board (the Board) licensing conditions impose additional requirements on existing and new electricity market participants. Distributors will be interacting with many of these market participants and may be in a position to play a monitoring and enforcement role (i.e., a policing role). In most cases, a distributor will be obligated to ensure that third parties follow the requirements imposed on them by the distributor.¹ The issue is:

What role should a distributor have regarding monitoring and enforcement of market participant obligations outside of those imposed by the distributor?

Options

1. A distributor has no responsibility to ensure that market participants with whom the distributor interacts are in compliance with all applicable laws and rules.
2. A distributor has no policing responsibilities, but should educate market participants about their responsibilities if the opportunity arises.
3. If a distributor realizes that an entity is out of compliance with an applicable law or rule, the distributor is obligated to report the entity to the appropriate authorities.
4. A distributor is obligated to ensure that a market participant with whom the distributor interacts is in compliance with third-party rules and regulations.

Background Information

Rules and regulations tend to assign monitoring and enforcement responsibility to a specified entity. For example, the Board is responsible for monitoring and enforcing licence conditions; the Ministry of Environment is responsible for monitoring and enforcing compliance with environmental regulations.

A distributor may be in a position to monitor and enforce laws and rules. For example, a distributor who is connecting a generator may be in the position to ensure that the distributor is licensed or refuse connection. The distributor also could use the threat of disconnection as an enforcement mechanism. However, a distributor would not easily be able to monitor whether the generator's licence has lapsed or is revoked after a connection has been made.

¹ This may be accomplished through contractual conditions or the threat of disconnection.

Implementation Issues

There are many circumstances in which a distributor may not be able to perform a monitoring and enforcement role for third party rules. First, a distributor is not likely to know the intricacies of all the laws applicable to a market participant. Second, a distributor is not likely to have the capability to monitor continuously other market participants without undue burden. Third, a distributor has limited enforcement power. Fourth, it may be unlawful to use the enforcement threat a distributor has (e.g., disconnection) for another purpose.

Another implementation issue related to imposing a policing function on a distributor through the Distribution System Code is the implication for a distributor that is unable to monitor and enforce. A distributor that is unable to perform the policing function would be in violation of its licence and ultimately could have its licence revoked.

Summary of Discussion

In other Summary of Recommendations, the Distribution System Code Committee was reluctant to impose a monitoring and enforcement function on distributors. For example, connection rules may require a distributor to notify a generator that it may require a generator's licence, but does not require a distributor to deny connection if the generator is not licensed.

If a distributor is required to perform a policing function as part of its licence, a distributor could be in violation of its licence for reasons outside of the control of the distributor. Imposition of a policing function on a distributor could be costly and difficult. Furthermore, other entities already have been assigned policing functions related to various laws and regulations. Jurisdictional issues may arise if a distributor also is assigned the responsibility.

This said, a distributor may have information that is helpful for a market participant to comply with laws that are applicable to it. What the market participant did with respect to this information would be at the discretion of the market participant; a distributor would not be liable or responsible for the market participant's actions.

Recommendation

Option 2 is recommended. Distributors should not be required to monitor or enforce legal, regulatory or statutory requirements other than requirements a distributor imposes on third parties. If a distributor is able to educate a person about that person's obligations under other laws or rules, the distributor may do so.

Voter Summary

Unanimous.

Dissenting Opinions

None.