

**Draft Guidelines
for the
Interpretation of Electricity Distribution Activities
under Section 71 of the
*Ontario Energy Board Act, 1998***

**ONTARIO ENERGY BOARD
Staff Draft for Consultation Purposes**

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TABLE OF CONTENTS

	<u>Page</u>
1. PURPOSE	3
2. BACKGROUND	3
3. RELEVANT LEGISLATION	
3.1 Legislative restriction on business activity under the <i>Act</i>	4
3.2 Provision of telecommunications service under the <i>Electricity Act</i>	5
3.3 Definitions under the <i>Act</i>	6
3.4 Separation of financial records under the <i>Act</i>	6
3.5 Definition under the <i>Affiliate Relationships Code</i>	7
4. INTERPRETATION OF SECTION 71 OF THE <i>ACT</i>	7
5. GUIDELINES FOR THE INTERPRETATION OF DISTRIBUTION ACTIVITIES	
5.1 Definition of distribution activity	8
5.2 Distribution activity	8
5.3 Non-distribution activity	9
5.4 Offering of distribution services to third parties	10
5.5 Requirements for the provision of service	11

Appendix 1 - Summary chart for interpretation of section 71 of the *Act*

Draft Guidelines for the Interpretation of Section 71 of the *OEB Act, 1998*

1. PURPOSE

- 1.1 Under section 71 of the *Ontario Energy Board Act, 1998* (the “Act”), Local Distribution Companies (“LDCs”), upon their incorporation under the *Business Corporations Act*, will not be allowed to conduct “any business activity other than transmitting or distributing electricity” or the provision of Standard Supply Service.
- 1.2 Section 71 of the *Act* has not been proclaimed as at the date of the Guidelines. In addition, this section does not apply to Municipal Electric Utilities (“MEUs”) prior to their incorporation.
- 1.3 The Guidelines provide general guidance to incorporating LDCs as to whether they may (or may not) carry out certain types of activities under section 71 of the *Act*.
- 1.4 The Guidelines set out the approach that the Board will generally take when there are matters in issue with respect to section 71 of the *Act* before the Board. However, the Guidelines do not fetter the Board’s discretion to make a decision which differs from the Guidelines where appropriate.

2. BACKGROUND

- 2.1 Historically, LDCs have been engaged in the provision of a number of services, including:
 - C Meter reading services;
 - C Billing and collection services;
 - C Tree trimming services;

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- C Street lighting services;
 - C Renting or selling hot water heaters;
 - C Renting of sentinel lights;
 - C Water and sewer services;
 - C Electricity generation;
 - C Telecommunications services; and
 - C Administrative services.
- 2.2 The provisions of these services by an incorporated LDC will be affected by the proclamation of section 71 of the *Act*.

3. RELEVANT LEGISLATION

3.1 Legislative restriction on business activity under the *Act*:

Section 71

“Subject to subsection 70(9), a transmitter or distributor, other than a public utility commission or a municipal corporation, shall not, except through an affiliate or affiliates, carry on any business activity other than transmitting or distributing electricity.”

Section 73(1)

“If one or more municipal corporations own, directly or indirectly, voting securities carrying more than 50 per cent of the voting rights attached to all voting securities of a corporation that is a distributor, the distributor’s affiliates shall not carry on any business activity other than the following:

1. Transmitting or distributing electricity.

Draft Guidelines for the Interpretation of Section 71 of the *OEB Act, 1998*

2. Owning or operating a generation facility that was transferred to the distributor pursuant to Part XI of the *Electricity Act, 1998* or for which the approval of the Board was obtained under section 82 or for which the Board did not issue a notice for review in accordance with section 80.
3. Retailing electricity.
4. Distributing or retailing gas or any other energy product which is carried through pipes or wires to the user.
5. Business activities that develop or enhance the ability of the distributor or any of its affiliates to carry on any of the activities described in paragraph 1, 3 or 4.
6. Business activities the principal purpose of which is to use more effectively the assets of the distributor or an affiliate of the distributor, including providing meter installation and reading services, providing billing services and carrying on activities authorized under section 42 of the *Electricity Act, 1998*.
7. Managing or operating, on behalf of a municipal corporation which owns shares in the distributor, the provision of a public utility as defined in section 1 of the *Public Utilities Act* or sewage services.
8. Renting or selling hot water heaters.
9. Providing services related to improving energy efficiency.”

3.2 Provision of telecommunications service under the *Electricity Act, 1998*

Section 42(1)(a)

“If part of a transmission or distribution system is located on land with respect to which the transmitter or distributor has an easement or other right to use the land, the transmitter or distributor may use the land that is subject to the easement or other right for the purpose of providing telecommunications service.”

Section 42(3)

“Clause 1(a) is subject to section 71 of the *Ontario Energy Board Act, 1998*.”

3.3 Definitions under the Act

Section 56

“distribute”, with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less.

“distribution system” means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose.

“distributor” means a person who owns or operates a distribution system.

3.4 Separation of financial records under the Act

Section 72

“Every distributor shall keep its financial records associated with distributing electricity separate from its financial records associated with other activities.”

Section 70(2)(f)

“The conditions of a licence may include provisions requiring the licensee to

maintain specified accounting records, prepare accounts according to specified principles and maintain organizational units or separate accounts for separate business in order to prohibit subsidies between separate businesses;”

3.5 Definition under the Affiliate Relationships Code for Electricity Distributors and Transmitters, 1 April 1999 (the “Affiliate Relationships Code”)

Section 1.2

“utility services” means the services provided by a utility for which a regulated rate, charge or range rate has been approved by the Board under section 78 of the *Act*, and includes a distributor’s obligation to sell electricity pursuant to section 29 of the *Electricity Act, 1998*.

4. INTERPRETATION OF SECTION 71 OF THE ACT

4.1 Section 71 of the *Act* does not provide an explicit definition on “business activity other than [...] distributing electricity”. However, it appears to limit a distributor from carrying on activities other than those activities essential for electricity distribution.

4.2 Historically, a number of MEUs have been structured as integrated public utilities carrying out a wide range of activities including the provision of water and sewer services, renting and selling hot water heaters, municipal services etc. These utilities, upon their incorporation, may not be allowed to continue to provide some of the existing services following the proclamation of section 71 of the *Act*.

5. GUIDELINES FOR THE INTERPRETATION OF DISTRIBUTION ACTIVITIES

5.1 Definition of distribution activity

5.1.1 Due to unforeseeable future circumstances, it is impossible to provide a specific definition of “business activity other than [...] distributing electricity” as contemplated by section 71 of the *Act*. However, activities that are essential to enable the conveyance of electricity would generally be considered as distribution activity.

5.2 Distribution activity

5.2.1 The following activities may generally be considered as essential to enable the conveyance of electricity and therefore be regarded as distribution activities (or distribution services):

- (a) Meter reading services;
- (b) Billing and Collection services;
- (c) Tree trimming services for the purpose of line maintenance;
- (d) Repair and Maintenance for the distribution lines and facilities;
- (e) Construction of distribution lines and facilities;

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- (f) General administrative support services;
- (g) Telecommunications services for electricity distribution (e.g. SCADA); and
- (h) Other service(s) that satisfy the general principle set out in section 5.1.1.

The activities listed above are within the definition of distribution activities under section 71 of the *Act* and would be allowed to remain as part of the LDC operations.

5.2.2 Distribution activities under section 71 of the *Act* should be distinguished from the definition of “utility services” under the Affiliate Relationships Code.

5.2.3 Distribution activities may include:

C rate-regulated activities defined as “utility services” under the Affiliate Relationships Code; and

Cnon rate-regulated activities that are required for the conduct of the utility business.

5.3 Non-distribution activity

5.3.1 The following activities generally may not be considered as essential to the conveyance of electricity and therefore not regarded as distribution activities:

- (a) Street Lighting services;
- (b) Renting or selling of hot water heaters;
- (c) Renting of sentinel lights;
- (d) Water and sewer services;

- (e) Electricity generation; and
- (f) Other services that do not satisfy the general principle set out in section 5.1.1.

The activities listed above do not fall under the definition of distribution activities under section 71 of the *Act*. Therefore they should be provided through an affiliate or affiliates or by another party.

5.4 Offering of distribution services to third parties

- 5.4.1 Section 5.2.1 provides a list of activities that are considered to be distribution services. Historically, many of these services are organized (due to labour and service level requirements) in such a manner that there may be excess service capacity which could be offered to other parties as follows:

CDistribution services offered to other licensed distributors, including affiliates;
CDistribution services offered to non-distributors, including affiliates.

Distribution services offered to other licensed distributors

- 5.4.2 With regard to services offered to other licensed LDCs, these activities will be considered to be distribution activities under section 71 of the *Act* and will therefore be allowed to remain as part of the LDC operations. The treatment of the assets and revenues by the LDC will be subject to the Board's rate-making decisions.

Draft Guidelines for the Interpretation of Section 71 of the *OEB Act, 1998*

Distribution services offered to non-distributors

- 5.4.3 If the LDC's primary purpose of offering distribution services to non-distributors (including affiliates of the distributor) is to utilize excess service capacity and if the services are predominantly used for electricity distribution, they will be considered to be distribution activities under section 71 of the *Act*.
- 5.4.4 The "Predominant-Use Test" (section 5.4.6) will be applied to determine whether a service is predominately used for electricity distribution.
- 5.4.5 Should a service provided by an LDC to a non-distributor meet the "Predominant-Use Test" under section 5.4.6, the provision of such service would be allowed to remain as part of the LDC operations. Conversely, failure to meet the "Predominant-Use Test" would require the LDC to scale back the provision of the service to non-distributors so that the test is met or have an affiliate or affiliates provide the service.

The Predominant-Use Test

- 5.4.6 A service or resource is considered not to be predominately used for the distribution of electricity when:
- (a) the service is provided by the LDC;
 - (b) a portion of the capacity of the services mentioned in (a) is offered to a party or parties other than distributors; and
 - (c) the portion mentioned in (b) exceeds 25% of the total service capacity measured by any one of:

Draft Guidelines for the Interpretation of Section 71 of the *OEB Act, 1998*

- C total number of labour hours,
- C total costs of material consumption; and
- C total unit of output.

5.5 Requirements for the provision of service

- 5.5.1 When provision of the service is allowed to remain as part of the LDC operations, section 72 of the *Act* requires the LDC to maintain separate financial records for electricity distribution and other activities. The LDC should refer to the Board approved Accounting Procedures Handbook for Electric Distribution Utilities for details of the appropriate accounting treatments.

- 5.5.2 In both of the scenarios addressed in section 5.4, service agreements and transfer pricing arrangements should be drawn and agreement reached among all parties involved adhering to the principles set out in section 2.2.1, 2.3.1, 2.3.2 and 2.3.3 of the Affiliate Relationships Code.

- 5.5.3 An LDC should maintain records to substantiate its ongoing ability to meet the “Predominant-Use Test” for distribution services.

- 5.5.4 Appendix 1 is a schematic representation of the Guidelines.

Draft Guidelines for the Interpretation of Section 71 of the *OEB Act, 1998*
