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BULLETIN

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**TO: All Licensed Electricity Retailers
All Licensed Gas Marketers
All Other Interested Parties**

RE: Requirements Related to Network and Multi-level Marketing and the Status of Internet-based Transactions When a Salesperson is Present

This Bulletin provides guidance in relation to two issues pertaining to the retailing of electricity or the marketing of gas to low-volume consumers; namely, (i) requirements that apply in the context of “network” or “multi-level” activities; and (ii) the status of internet transactions effected while a salesperson is present, whether occurring in the context of “network” or “multi-level” activities or otherwise.

1. Background

This Bulletin sets out Board staff's views on the retailing of electricity or the marketing of gas to low-volume consumers using a network or multi-level business model and internet transactions that are effected while a salesperson acting on behalf of a supplier is present.

2. Network or Multi-level Business Model

Some suppliers are using sales channels that they have characterized as falling under a “network” or “multi-level” (together, “multi-level”) business model. Under such a model, a person acting on behalf of the supplier arranges to meet with consumers using a variety of means, including a ‘friends and family’ approach and visiting specific consumers who are known to the person through other networking channels such as social media.

Under the *Energy Consumer Protection Act, 2010* (the “ECPA”), retailing or marketing is defined to include selling or offering to sell electricity or gas, respectively, to a consumer. The Electricity Retailer Code of Conduct and the Code of Conduct for Gas Marketers (together, the “Codes”) define retailing or marketing as including “...any other means by which a [supplier] interacts directly with a consumer”.

Section 2 of the ECPA defines a salesperson as a person who, for the purpose of effecting sales of gas or electricity or entering into agency agreements with consumers, conducts marketing or retailing on behalf of a supplier or makes one or more representations to one or more consumers on behalf of a supplier, whether as an employee of the supplier or not. The Codes define the term “salesperson” by reference to section 2 of the ECPA, and for greater certainty add that a salesperson includes any person that offers or negotiates the renewal or extension of a contract on behalf of a supplier. Ontario Regulation 90/99 (Licence Requirements – Electricity Retailers and Gas Marketers) (the “Licence Regulation”) made under the *Ontario Energy Board Act, 1998* includes provisions pertaining to business cards (section 5), identification badges (section 6), and training (section 7) in respect of persons that meet in person with a low-volume consumer while acting on behalf of a supplier. Section 1(2) of the Licence Regulation confirms that a reference to meeting in person “includes soliciting, negotiating, entering into, amending, renewing or extending the term of a contract in person with a low-volume consumer”.

Based on the foregoing, it is Board staff's view that a supplier using a multi-level marketing business model is engaging in retailing or marketing, and that persons acting on the supplier's behalf are "salespersons" within the meaning of the ECPA and the Codes. Therefore, all legal and regulatory requirements pertaining to the conduct of salespersons apply to such persons. This includes: (i) the requirement to offer a business card and to wear an identification badge as required by and in accordance with section 2 of the Codes and sections 5 and 6, respectively, of the Licence Regulation; and (ii) the requirement to have successfully completed training before retailing or marketing to a consumer as required by and in accordance with section 5 of the Codes and section 7 of the Licence Regulation.

3. Internet Transactions when Salesperson is Present

Staff has also become aware of a sales approach whereby a consumer completes an internet-based contracting process while the supplier's salesperson is present. Staff is aware that this approach has been used in the context of the multi-level business model, but it may also be used in other circumstances. The views expressed below are therefore not limited to the multi-level business model context.

The requirements applicable to contracting with consumers as set out in the ECPA and in Ontario Regulation 389/10 (General) made under the ECPA (the "ECPA Regulation") vary depending on the manner in which a contract is entered into, whether in person, by mail or over the internet.

Notably, internet agreements are not subject to the verification requirement. Under section 17 of the ECPA, there are two further exceptions to the requirement that a contract be verified:

- i. where the contract is negotiated and entered into as a result of a consumer contacting a supplier, unless the contact occurs within 30 days after the supplier contacts the consumer; and
- ii. where the contract is entered into by a consumer's response to a direct mail solicitation from a supplier.

In Board staff's view, the common premise underlying the waiver of the requirement for verification in all three cases outlined above (internet agreements and the circumstances referred to in (i) and (ii) above) is that the consumer is entering into a contract having had the opportunity to consider the matter at his or her own leisure, absent any pressure or influence that may arise by virtue of the presence of a salesperson or of the expectation of a salesperson returning imminently after the consumer completes the transaction.

Board staff believes that, where a consumer is completing an internet contracting transaction in the presence of a salesperson, the transaction is properly treated as an "in person" transaction by virtue of the presence of the supplier's salesperson at the relevant time. To be compliant, the transaction must therefore meet all of the requirements applicable to "in person" transactions, including verification under section 15 of the ECPA and in relation to the manner in which the contract is to be provided to the consumer and in which the consumer acknowledges receipt of the contract (section 10(1) of the ECPA Regulation).

Board staff emphasizes that this will be the case even if the supplier's salesperson absents himself or herself from the premises while the consumer is completing the internet transaction, if the salesperson indicates that he or she will return to the premises on or imminently after completion of the transaction. Where, however, the salesperson leaves the premises, makes no representation about returning, and is not

present when the consumer completes the internet transaction, then the requirements pertaining to internet contracts will apply.

Board staff considers this view to be consistent with the purpose and intent of the overall legislative framework that governs the activities of suppliers, and ensures that the form of the transaction (over a computer as opposed to on paper) is not allowed to diminish the protections given to consumers under that framework.

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 market.operations@ontarioenergyboard.ca or 416-440-7604.

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