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COMPLIANCE BULLETIN

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**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

This Bulletin provides 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.

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. More specifically, the section establishes an exhaustive list of activities that such affiliates may undertake, including distributing and retailing electricity, distributing or retailing gas and renting or selling hot water heaters, as well as business activities the principal purpose of which is to use more effectively the assets of the distributor or of an affiliate of the distributor. For convenience of reference, section 73 of the OEB Act is

reproduced in its entirety in Appendix A.

A number of distributors have affiliates that are engaged in the provision of street lighting services, such as street light installation and maintenance. A question has been raised as to whether this is permissible under section 73 of the OEB Act. This Bulletin sets out Board staff's views pertaining to the application of section 73 of the OEB Act to the provision of street lighting services by affiliates of distributors.

Section 73(3) of the OEB Act states that section 73(1) does not restrict the activities of a municipal corporation. As such, this Bulletin only addresses the issue of the provision of street lighting services by distributor affiliates that are not municipalities.

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. In arriving at this view, Board staff has noted the following Board proceedings:

- i. As part of the revisions to the Affiliate Relationships Code for Electricity Distributors and Transmitters (the "ARC") (EB-2007-0662) that were adopted by the Board in 2008 (EB-2007-0662), the Board amended the definition of "energy service provider" to include a person that is involved in, among other things, street lighting services and sentinel lighting services. It follows that the Board was satisfied that energy service provider affiliates of a distributor can provide those services.
- ii. In a proceeding regarding applications by Toronto Hydro-Electric System Limited ("Toronto Hydro") and its affiliates relating to the sale of street lighting assets (EB-2009-0180/0181/0182/0183), it was clear that an affiliate of the distributor owned street lighting assets and provided programs in relation to

street lighting. The Board determined in that case that some of the street lighting assets were distribution assets and could be transferred to the distributor. Although not discussed by the Board, the street lighting assets that could not be transferred to the distributor presumably would or could remain with the affiliate.

- iii. In a proceeding regarding an application by Lakeland Power Distribution Ltd. for an exemption from the ARC (EB-2006-0029), the issue was whether the distributor should be permitted to share employees with its affiliate for the purposes of the provision by the latter of street lighting services. The application was denied, but not on the basis of there being an issue in relation to the provision of street lighting services by Lakeland Power's affiliate.

Board staff is aware that the list of permissible activities in section 73(1) does not refer specifically to street lighting, and that none of the proceedings referred to above specifically identified the particular item in section 73(1) of the OEB Act that would authorize the provision of street lighting services by an affiliate. In Board staff's view, street lighting services can be permitted under item 6 [as listed under section 73(1)]; 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:

- i. In many, if not most, instances, the municipality owns the street lights. Street lights are thus assets of an affiliate of a distributor. In this context, the maintenance of street lighting assets by an affiliate makes more effective use of the street lighting assets.
- ii. Distributors own the poles on which street lights are installed. The installation and maintenance of street lighting assets by an affiliate allows for the more effective use of the distribution poles.

- 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 [under section 73(1)]; 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.

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@oeb.gov.on.ca.

Yours Truly,

Original Signed By

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Chief Operating Officer
Ontario Energy Board

APPENDIX A

Section 73 of the *Ontario Energy Board Act, 1998*

Municipally-owned distributors

- 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.
 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 of 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 the promotion of energy conservation, energy efficiency, load management or the use of cleaner energy sources, including alternative and renewable energy sources.
- (2) In acting under paragraph 7 of subsection (1), the distributor's affiliate shall not own or lease any works, pipes or other machinery or equipment used in the manufacture, processing or distribution of a public utility or in the provision of sewage services.
- (3) Subsection (1) does not restrict the activities of a municipal corporation.