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BY E-MAIL AND WEB POSTING

October 13, 2015

**To: All Licensed Electricity Distributors
All Licensed Electricity Retailers
Independent Electricity System Operator
All Other Interested Parties**

Re: Review of Handling of Ontario Power Generation Inc. Rebate Funds by Electricity Licensees

In response to concerns raised by a private citizen, the Ontario Energy Board (OEB) recently undertook a review of the handling of Ontario Power Generation Inc. rebate (OPG Rebate) funds by electricity distributors and electricity retailers. That review has now been completed.

A number of electricity licensees provided information to support the OEB's review, and did so under Part VII ("Inspectors and Inspections") of the *Ontario Energy Board Act, 1998*. Although details of individual reviews must remain confidential, the OEB considers it appropriate to provide all electricity distributors, electricity retailers and other interested parties with an overview of the OEB's review process and the results on an aggregated basis.

The OPG Rebate Mechanism

The OPG Rebate mechanism was, under one name or another, a feature of the electricity market until April 2009. It had its origins in a directive issued to the OEB in 1999, and was part of a framework that was put into place to address concerns about Ontario Power Generation Inc.'s (OPG) dominant position in the market. In very simplified terms, the OPG Rebate mechanism required OPG to pay a rebate equal to the amount by which its revenues from the market exceeded a specified revenue cap.

The Independent Electricity System Operator (IESO), distributors and retailers all had a role in passing through the OPG Rebate to consumers, in accordance with provisions in their licences designed for that purpose. The IESO provided OPG Rebate funds to distributors (among others), who in turn were required to promptly pass those funds through – with interest – to retailers, any embedded distributors and customers who were not paying Regulated Price Plan prices. Retailers were required to pass through the OPG Rebate funds received from distributors to their customers to the extent that the customers had not assigned the OPG Rebate back to the retailer. OPG Rebate funds that could not be distributed by a licensee were intended to be returned to the IESO, ultimately to be used to offset amounts in the Ontario Power Authority's variance account. For convenience, the relevant provisions of distributor and retailer licences are reproduced in Attachments A and B to this letter, respectively.

The OEB's Review

The OEB reviewed the handling of OPG Rebate funds received during the OPG Rebate period from May 1, 2006 to April 30, 2009, inclusive. Independent audits of 15 licensees were conducted by a third party on the OEB's behalf. The 12 audited electricity distributors, ranging in size from small to large and representing about 68% of Ontario consumers, collectively received 64% of all OPG Rebate funds paid to electricity distributors during the relevant period. Based on regulatory filings made to the OEB, the 3 audited electricity retailers are estimated to have collectively received between 35.5% and 48% of the OPG Rebate funds paid to retailers in any given year during the relevant period.

In addition, the OEB asked all non-audited electricity distributors to self-certify that they no longer have any OPG Rebate funds in their accounts.

Key Findings

Key findings from the OEB's review are:

- i. Interest was not always paid by electricity distributors on OPG Rebate funds passed through to retailers, embedded distributors and eligible consumers or returned to the IESO. As shown in Attachment A, distributors were required by condition of licence to pay interest on OPG Rebate amounts paid to eligible consumers, retailers and embedded distributors or returned to the IESO. If extrapolated over the total amount of OPG Rebate funds paid to all distributors during the period, it is estimated that the unpaid interest represents approximately 0.25% of those funds.

- ii. OPG Rebate funds were not always paid to eligible consumers or returned as promptly as they should have been. As shown in Attachments A and B, distributors and retailers were required by condition of licence to promptly pass through OPG Rebate amounts.
- iii. Five distributors have OPG Rebate funds remaining in their accounts that should have been returned to the IESO some time ago. The aggregate unreturned amount represents 0.08% of the total amount of OPG Rebate funds paid to all distributors during the period.

Compliance with licence and other regulatory requirements is a matter of serious concern to the OEB. The OEB is following up with certain electricity licensees to understand the reason for the apparent deficiencies in their handling of OPG Rebate funds, with a view to ensuring that they have appropriate mechanisms in place to ensure compliance with their on-going obligations. The distributors that have OPG Rebate funds remaining in their accounts were directed to return those funds to the IESO, with interest calculated and accrued as required by their condition of licence, and have confirmed with the OEB that they have done so.

Although the OEB's review indicates that there was non-compliance with respect to timeliness of actions and the payment of interest on OPG Rebate amounts, the OEB does not believe that the public interest requires that further general inquiries be made. The last quarterly OPG Rebate payments were disbursed by the IESO more than five years ago, giving rise to challenges associated with the unavailability of records, changes in personnel and the imperfect recollection of events. The OEB estimates that the financial impact associated with instances of non-compliance is generally relatively small on an individual ratepayer basis. The expenditure of further costs, ultimately paid by those same ratepayers, is not warranted in the circumstances.

However, the OEB has made it clear to all of the audited licensees, among others, that it expects that they will respond promptly and in an appropriate manner to any specific complaint from a consumer regarding their OPG Rebate payments. The OEB extends that expectation to all other electricity licensees.

The OEB now considers this review closed.

Sincerely,

Original Signed By

Kirsten Walli
Board Secretary

Appendix A
Excerpts From Electricity Distribution Licence

Market Power Mitigation Rebates

The Licensee shall comply with the pass through of Ontario Power Generation rebate conditions set out in Appendix A of this Licence.

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APPENDIX A
MARKET POWER MITIGATION REBATES

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ONTARIO POWER GENERATION INC. REBATES

For the payments that relate to the period from May 1, 2006 to April 30, 2009, the rules set out below shall apply.

1. Definitions and Interpretations

In this Licence

“embedded distributor” means a distributor who is not a market participant and to whom a host distributor distributes electricity;

“embedded generator” means a generator who is not a market participant and whose generation facility is connected to a distribution system of a distributor, but does not include a generator who consumes more electricity than it generates;

“host distributor” means a distributor who is a market participant and who distributes electricity to another distributor who is not a market participant.

In this Licence, a reference to the payment of a rebate amount by the IESO includes interim payments made by the IESO.

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3. Pass Through of Rebate

A distributor shall promptly pass through, with the next regular bill or settlement statement after the rebate amount is received, any rebate received from the IESO, together with interest at the Prime Rate, calculated and accrued daily, on such amount from the date of receipt, to:

- a retailers who serve one or more consumers in the distributor's service area where a service transaction request as defined in the Retail Settlement Code has been implemented and the consumer is not receiving the prices established under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998*;
- b consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are not served by a retailer where a service transaction request as defined in the Retail Settlement Code has been implemented; and
- c embedded distributors to whom the distributor distributes electricity.

The amounts paid out to the recipients listed above shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code. These payments may be made by way of set off at the option of the distributor.

If requested in writing by OPGI, the distributor shall ensure that all rebates are identified as coming from OPGI in the following form on or with each applicable bill or settlement statement:

“ONTARIO POWER GENERATION INC. rebate”

Any rebate amount which cannot be distributed as provided above or which is returned by a retailer to the distributor in accordance with its licence shall be promptly returned to the host distributor or IESO as applicable, together with interest at the Prime Rate, calculated and accrued daily, on such amount from the date of receipt.

Nothing shall preclude an agreement whereby a consumer assigns the benefit of a rebate payment to a retailer or another party.

Pending pass-through or return to the IESO of any rebate received, the distributor shall hold the funds received in trust for the beneficiaries thereof in a segregated account.

Appendix B
Excerpts From Electricity Retailer Licence

Market Power Mitigation Rebates

The Licensee shall comply with the pass through of Ontario Power Generation rebate conditions set out in Appendix A of this Licence.

APPENDIX A

MARKET POWER MITIGATION REBATES

“OPGI” means Ontario Power Generation Inc.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

“ONTARIO POWER GENERATION INC. rebate”

A retailer shall promptly return to a distributor any portion of the rebate received from the distributor which relates to low-volume or designated consumers receiving the fixed commodity price for electricity under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998*, who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer or another party.

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.

ONTARIO POWER GENERATION INC. REBATES

For the payments that relate to the period from May 1, 2006 to April 30, 2009, the rules set out below shall apply.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

“ONTARIO POWER GENERATION INC. rebate”

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.