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RENAULT**

LLP / S.E.N.C.R.L., s.r.l.

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ONTARIO ENERGY BOARD

Toronto, September 20, 2006

Ontario Energy Board
2300 Yonge Street, Suite 2700
P.O. Box 2319
Toronto, Ontario

Attention: Board Secretary

Dear Ms. Waffli: *Waffli*

**RE: Application by the Electricity Distributors Association pursuant to section 74 of the
Ontario Energy Board Act, 1998**

On behalf of the Electricity Distributors Association (the "EDA"), we have enclosed an application for an order or orders amending the electricity distribution licenses of all licensed electricity distributors in Ontario pursuant to section 74 of the *Ontario Energy Board Act, 1998*.

Please do not hesitate to contact me should you have any questions.

Yours very truly,

Ogilvy Renault LLP



Andrew Taylor

Attachment

cc: Mr. Charlie Macaluso
Ms. Deborah Steggles
Mr. Alan Mark

Barristers & Solicitors,
Patent Agents & Trade-mark Agents

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ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O.1998, c.15 (Sched. B);

AND IN THE MATTER OF an application by the Electricity Distributors Association pursuant to section 74 of the *Ontario Energy Board Act, 1998* for an Order or Orders amending the electricity distribution licenses of all licensed electricity distributors in Ontario;

AND IN THE MATTER OF a request for interim relief pending the final disposition of the application, pursuant to section 21(7) of the *Ontario Energy Board Act, 1998*

APPLICATION

1. The Applicant is the Electricity Distributors Association (the EDA). The EDA is non-share capital corporation whose members are the privately and publicly-owned local distribution companies (LDCs) in Ontario. Among other things, the EDA provides its members with advocacy and representation in the legislative and regulatory environment and the electricity market in Ontario.
2. Some time ago, the Ontario Energy Board developed the *Affiliate Relationships Code For Electricity Distributors and Transmitters* (the ARC). The Board requires LDCs to comply with the ARC which is incorporated by reference into the electricity distribution licenses issued to the LDCs.
3. The EDA's members have significant concerns about the Chief Compliance Officer's (the CCO) interpretation of the ARC and section 71 of the *Ontario Energy Board Act, 1998* (the OEB Act), as set out in his July 10, 2006 compliance bulletins 200604 and 200605.
4. In his bulletins, the CCO seeks to prohibit a number of activities that LDCs are involved in. These are activities that have previously been identified in license and rates

proceedings, with no concerns being expressed by the Board when making decisions to grant licenses and approve rates. The CCO's interpretations create broad and sweeping policy changes that have not been approved by the Board and constitute, in effect, new licensing requirements.

5. The activities that the CCO seeks to prohibit include:
 - (a) the contracting out of LDC employees in circumstance that maximize the efficient use of utility resources, which is specifically authorized by section 71 and 73 of the OEB Act, and which reduces costs that are otherwise recoverable from ratepayers in rates;
 - (b) the delivery of demand management programs by utilities, utilizing LDC staff and resources, which is specifically authorized by section 71 of the OEB Act and section 29.1 of the *Electricity Act, 1998* and which have been authorized by the Board in various rates proceedings; and
 - (c) the provision of services to affiliates and municipalities in circumstance that maximize the efficient use of utility resources, which is specifically authorized by section 71 and 73 of the OEB Act, and which reduces costs that are otherwise recoverable from ratepayers in rates, and in the case of street-lighting and sentinel lighting maintenance, ensure that electricity distribution safety and reliability is appropriately safeguarded.
6. The CCO makes reference to "energy service providers", a defined term in the ARC. He applies a definition that goes beyond what is properly within the scope of the Board's jurisdiction and then uses this definition to restrict the ability of an LDC to provide services to affiliates and non-affiliates, and to receive services from affiliates, which is otherwise permitted by the ARC or authorized under section 71 of the OEB Act and section 29.1 of the *Electricity Act*.
7. Compliance with the bulletins would require LDCs to change arrangements that were previously described in applications for licenses and rates which were subsequently approved by the Board. LDCs would incur significant costs and rates would increase, without corresponding benefits or protection to consumers and despite the fact that the CCO has not identified any harm to ratepayers flowing from existing arrangements.

8. The electricity sector has been evolving since the ARC was first drafted and the role of LDCs has changed. The bulletins are focussed on the existing wording of the ARC and fail to take into account the various rates decisions made by the Board and the legislative provisions that apply to the role of LDCs and the relationship between LDCs and their affiliates.
9. The ARC is intended to ensure that in LDC affiliate relationships, there is no inappropriate subsidization of affiliate businesses by LDC ratepayers, and that LDC affiliates do not have an unfair advantage over competitors in the electricity retailing and gas marketing marketplace. At the same time, LDCs have an obligation to their ratepayers to manage the costs associated with providing distribution service to ensure that rates are just and reasonable. Section 73 of the OEB Act specifically contemplates that affiliates can engage in activities that will maximize the efficient use of LDC resources.
10. The Board is authorized by the OEB Act to make codes such as the ARC and is obligated "to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service" when doing so. The CCO, when interpreting the ARC, must give consideration to protecting the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service because ultimately, the Board may have to address specific compliance matters and determine whether to issue a notice of non-compliance at the request of the CCO.
11. In his bulletins, the CCO has not taken into account the impact his ARC interpretation will have on rates and the efficient use of LDC resources and has failed to demonstrate the existence of any harm to ratepayers or to the electricity market resulting from the activities he seeks to prohibit. Furthermore, it is not open to the CCO to seek to prohibit activities that are authorized by the legislation.
12. It is in the public interest for the Board to provide clarification on these issues prior to requiring LDCs to embark upon costly compliance initiatives that are unnecessary and which would increase the regulatory burden of both the Board and the LDCs and, most importantly, increase the costs to be borne by ratepayers. The Board is obligated "to protect the interests of consumers with respect to prices and the adequacy, reliability and

quality of electricity service" in all matters it deals with in relation to electricity, including compliance matters.

13. Pursuant to section 71 of the OEB Act and section 29.1 of the Electricity Act, both LDCs and their affiliates are specifically authorized to "provide services that would assist the Government of Ontario in achieving its goals in electricity conservation". LDCs have been identified by both the Government and the Ontario Power Authority as key providers of such services. The Board has specifically authorized conservation and demand management programs proposed by LDCs. The CCO's interpretation of the ARC would prohibit LDCs from delivering such programs and services. Clearly, the legislation prevails over the the CCO's views and this needs to be confirmed by the Board in order to remove the regulatory uncertainty created by the bulletins.
14. Accordingly, the EDA applies to the Board, pursuant to Section 74 of the OEB Act, for an Order or Orders amending the electricity distribution licenses held by all electricity distributors by amending the ARC so that:
 - i) the circumstances under which it is appropriate for LDCs to provide services to affiliates and others are established, where the provision of such services reduces revenue requirement, effectively utilizes the assets of the distributor, and does not harm ratepayers;
 - ii) the definition of "confidential information" is changed to: *"means information the utility has obtained relating to a specific consumer, retailer or generator in the process of providing current or prospective utility service that is not available to the public and would provide a competitive advantage to an affiliate retailing electricity or marketing natural gas"*;
 - iii) the circumstances under which it is appropriate to share LDC employees that carry out the day-to-day operation of the distribution network (as per section 2.2.4 of the ARC) are clarified in a manner that is consistent with section 71 of the OEB Act and 29.1 of the Electricity Act;
 - iv) there is clarification that the objective of enhancing the "development of a competitive market" (as per section 1.1. of the ARC) is limited to the competitive market that falls within the scope of the Board's jurisdiction, with the following definition of "energy service provider": *"means a person, other than a utility, involved in retailing electricity, generating electricity or marketing natural gas"*;

- v) there is reconciliation between those parts of the ARC and the 2006 EDR process that contemplated affiliate relationships on the one hand, and those parts of the bulletins that would appear to prohibit such relationships, on the other hand.

REQUEST FOR INTERIM RELIEF

15. The bulletins have created significant uncertainty for all LDCs who are each affected by some aspect of the bulletins. LDCs take their regulatory obligations seriously and it is a matter of great concern to LDCs to have the CCO take the position that longstanding arrangements that reduce costs to ratepayers, promote safety and reliability, and assist the Province in implementing its conservation objectives, constitute a breach of license by LDCs.
16. Therefore the Applicant requests an interim order, pending final disposition of this application, requiring the CCO to put on hold any compliance activity arising out of the bulletins.
17. The Applicant also respectfully requests that the Board refrain from issuing any notices of non-compliance that may be recommended by the CCO arising out of his bulletins, pending the final disposition of this application.
18. The EDA requests that a copy of all documents filed with the Board by any party be served on the Applicant and the Applicant's counsel, as follows:

- (a) The Applicant:

The Electricity Distributors Association
3700 Steeles Avenue West
Suite 1100
Vaughan, Ontario L4L 8K8

Attention: Mr. Charlie Macaluso
President and CEO
Telephone: (905) 265-5300
Fax: (905) 265-5301
Email: cmacaluso@mearie.ca

Attention: Ms. Deborah Steggles
Vice President, Policy and Government Relations
Telephone: (905) 265-5300
Fax: (905) 265-5301
Email: dsteggles@eda-on.ca

(b) The Applicant's Counsel:


Ogilvy Renault
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
P.O. Box 84
Toronto, Ontario M5J 2Z4

Attention: Mr. Alan Mark
Telephone: (416) 216-4865
Fax: (416) 216-3930
Email: amark@ogilvyrenault.com

DATED at Toronto, Ontario, this 20th day of September, 2006.

THE ELECTRICITY DISTRIBUTORS ASSOCIATION

By its counsel



Ogilvy Renault LLP

Andrew Taylor

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P.O. Box 2319
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BY EMAIL ONLY

October 26, 2006

Mr. Alan Mark
Ogilvy Renault LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
P.O. Box 84
Toronto, ON M5J 2Z4

Dear Mr. Mark:

The Board is in receipt of your application dated September 20, 2006 seeking the following:

1. an order or orders amending the electricity distribution licences of all licensed electricity distributors in Ontario by amending the Affiliate Relationships Code for Electricity Distributors and Transmitters (the "ARC"); and
2. an interim order requiring the Board's Chief Compliance Officer to refrain from compliance activities associated with certain issues pertaining to the ARC.

This letter is to advise you that the Board is proposing to dismiss your application without a hearing under Rule 18 of the Board's *Rules of Practice and Procedure* on the grounds that there is no statutory basis for the relief being sought.

With respect to item (1), although section 74 of the *Ontario Energy Board Act, 1998* (the "Act") provides a means by which application can be made to amend an electricity distribution licence, it does not provide a means by which a Code can be amended. Sections 70.1 to 70.3 of the Act are clear as to the process that applies to the issuance or amendment of a Code by the Board.

Any revised application that you may wish to file would need to meet the following criteria:

- (a) the application should identify the distributors whose licences are sought to be amended;
- (b) for each such distributor, the following should be provided:
 - i. either a request for an exemption from the application of a specific provision or provisions of the ARC or a request for a specific provision or provisions of the ARC to apply to the distributor in a modified form. In the latter case, the exact nature of the modified form of the provision(s) should also be specified; and
 - ii. the factual circumstances supporting the request.

Each distributor identified in the application would be expected to participate in the licence amendment proceeding.

With respect to item (2), there is no statutory basis upon which the Board would issue an order directing the Chief Compliance Officer to act or refrain from acting in a particular manner. While the Board clearly has the ability to provide direction to its employees, this is a purely administrative matter. The Board does not believe that this element of your application is susceptible of being revised in a form that would result in the relief sought being granted.

In accordance with Rule 18.03, you have 10 calendar days from the date of receipt of this letter in which to make written submissions on the proposed dismissal of your application.

Yours truly,

Original Signed By

Peter O'Dell
Assistant Board Secretary

c. Mr. Charlie Macaluso, EDA

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File No. 01009188-0027

Toronto, November 6, 2006

Ontario Energy Board
2300 Yonge Street, Suite 2700
P.O. Box 2319
Toronto, Ontario

Attention: Board Secretary

Dear Ms. Walli:

RE: EB-2006-0232

On behalf of the Electricity Distributors Association (the "EDA"), we are writing in response to the letter of the Ontario Energy Board (the "Board") dated October 26, 2006 in the above-referenced matter (the "Letter").

The EDA objects to the Board's proposal to dismiss its application (the "Application").

Jurisdiction to Amend Licence Conditions

According to the Board, there is no statutory basis for the relief being sought. The Application was made pursuant to 74 of the *Ontario Energy Board Act, 1998* (the "OEB Act") which provides:

74(1) The Board may, on the application of any person, amend a licence if it considers the amendment to be,

- (a) necessary to implement a directive issued under this Act; or
- (b) in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*.

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It is the Board's position that "although section 74 provides a means by which application can be made to amend an electricity distribution licence, it does not provide a means by which a Code can be amended." The EDA submits that this assertion is incorrect in respect of a code that has been incorporated by reference as a condition of a distribution licence.

The sole source of the Board's authority to impose conditions in distribution licences is section 70 of the Act:

70(1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*.

What section 70(1) does is permit the Board to specify the conditions, if any, attaching to the authorization to carry out an activity permitted by section 57. It makes no distinction between conditions which are contained in a Code and other types of conditions.

Section 70.1(1) provides:

70.1 (1) The Board may issue codes that, with such modifications or exemptions as may be specified by the Board under section 70, may be incorporated by reference as conditions of a licence under that section.

Section 70.1(1) allows the Board to incorporate codes as licence conditions, but it specifically ties back to the Board's licence condition power under section 70. That reinforces the conclusion that a code has the same status as any other licence condition.

Once issued, a licence can be amended. It is clear, pursuant to section 74(1), that any condition of a licence can be amended on the application of any person. There is nothing in section 70(1), section 70.1, or elsewhere that supports the position that a licence condition which is in the form of a code is a distinctive type of condition which cannot be amended pursuant to section 74(1). If a code is a licence condition, it is amenable to an application to amend. The Board thus has clear authority to proceed with the EDA's application and, accordingly, must do so.

The Board's position seems to be based on the notion that sections 70.1 to 70.3 set out the exclusive means to amend a code. This position is not supported by anything in the statute. Indeed, not only is section 74 an appropriate section to proceed under, it is the only one. Sections 70.1 to 70.3 prescribe the mechanism by which the Board can revise a code, but say nothing about amendments upon the application of other persons. There is simply no basis for the conclusion that sections 70.1 to 70.3 in any way modify or limit section 74(1).

Section 74 is the means by which any person (in this case, the EDA) can apply to the Board to amend the licences of all distributors including any code incorporated into those licenses. Sections 70.1 to 70.3 do not give any person the right to apply to the Board to amend either a

code or a licence. Therefore, the Board's suggestion that the amendment application be brought under, and only under, sections 70.1 to 70.3 is both incorrect and would unduly limit the scope of section 74. Section 74 clearly permits the application which has been made.

Who May Apply and For What

The Board has indicated that the EDA may amend its application to meet the following criteria:

- (a) the application should identify the distributors whose licences are sought to be amended;
- (b) for each such distributor, the following should be provided:
 - (i) either a request for an exemption from the application of a specific provision or provisions of the ARC or a request for a specific provision or provisions of the ARC to apply to the distributor in a modified form. In the latter case, the exact nature of the modified form of the provision(s) should also be specified; and
 - (ii) the factual circumstances supporting the request.

In regard to the first criterion, that the Application should identify the distributors whose licences are sought to be amended, the Application expressly provides at paragraph 14 that the EDA is applying to amend "the electricity distribution licences held by all electricity distributors". Thus, this criterion has been satisfied. If the Board is suggesting that the EDA must apply to the Board on behalf of specific distributors, such an interpretation would only allow licence holders and their agents to apply for licence amendments under section 74. Such an interpretation would demonstrate complete disregard for the phrase "any person" contained in section 74. If the Legislature had meant that only the licensee could apply for an amendment, it would have said so.

In regard to the second criterion, the Board has indicated its view that the EDA's application must be limited to a request for i) a code exemption; or ii) a specific modification to a code. Based on the language used by the Board in describing this criteria, it is apparent that the Board believes that the EDA's Application must be made pursuant to section 70.1(1). Section 70.1(1) refers to the power of the Board to specify modifications or exceptions "under section 70". However, as noted above, section 70.1 does not provide a licensee, or any other person other than perhaps the Board itself, with an opportunity to apply for a modification or an exemption with respect to code provisions incorporated by reference in a licence. Why the Board would suggest that section 70.1(1) provides a mechanism for the amendment of a Code provision incorporated into a licence is, with respect, completely unclear.

This is to be contrasted, of course, with the express right of any person to amend any licence condition created by section 74. The suggestion that section 74 does not create a right to apply for an amendment of a code provision, when it clearly does, but that section 70.1(1) creates a right to apply to modify or obtain exemption from a code provision, when it says no such thing, is an untenable proposition.

In any event, paragraph 14 of the Application sets out the EDA's proposed modifications to the the ARC incorporated by reference into a licence condition of each LDC's licence.

With respect to the related requirement specified by the Board that "each distributor identified in the application would be expected to participate in the licence amendment proceeding," this assertion is not consistent with the applicable principles of administrative law. Each LDC is entitled to notice of the EDA's application and it is up to each LDC to decide if it wishes to participate in the proceeding.

Accordingly, the EDA has appropriately applied for amendments to the licences of all distributors under section 74 of the OEB Act. That section does not place restrictions on the identity of the applicant, nor does it require that only exemptions or modifications on a licence-by-licence basis be requested. LDCs who wish to participate may do so, but none are obliged to.

Conclusion

The Board has indicated that it is relying on Rule 18 of its *Rules of Practice and Procedure* to dismiss the EDA's application, on the grounds that "there is no statutory basis for the relief being sought". For the reasons set out above, section 74 clearly provides the Board with the statutory basis to amend a distribution licence.

The basis for Rule 18 that gives the Board the jurisdiction to dismiss a proceeding without a hearing is section 4.6 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22, as amended, which states:

4.6(1) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,

- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
- (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

Given that:

- (a) the EDA's application is not frivolous, vexatious or commenced in bad faith;
- (b) an application to amend a licence clearly relates to matters within the Board's jurisdiction; and
- (c) there are no statutory requirements for bringing a proceeding under section 74 that remain unmet,

Rule 18 cannot serve as the basis for proposing to dismiss the EDA's application without a hearing.

Indeed, even if the Board maintains the position set out in the Letter that certain relief sought is unavailable, the Board is required to proceed with the application. It may be that the Board would choose to deny the ruling sought at the conclusion of the proceeding, but none of the conditions that would entitle the Board to dismiss the application at this stage, without a hearing, have been met.

We note that the Board's position, in addition to being jurisdictionally incorrect, seems to disregard an important regulatory function. Your Chief Compliance Officer has issued bulletins advancing controversial interpretations of the ARC and certain statutory provisions which put all LDCs in jeopardy and threaten harm to ratepayers. In some respects, the bulletins of the Chief Compliance Officer contradict previous orders of the Board.

This has created tremendous regulatory uncertainty and is an obvious regulatory failure. This uncertainty creates business problems for LDCs who take their compliance obligations seriously. LDCs have disclosure requirements regarding regulatory compliance when they go to the financial markets. The uncertainty created by the compliance bulletins will pose a significant challenge to LDCs in meeting those disclosure requirements. The compliance bulletins also create great uncertainty regarding the ability of LDCs to deliver conservation and demand management programs, something they are clearly authorized by the statute to do. Conservation and demand management are a provincial policy priority and the uncertainty created by the compliance bulletins needs to be resolved urgently.

A case by case approach is not practical or cost-effective; nor will it yield timely results. The LDC community wishes the regulator to convene a generic proceeding to deal with the important issues raised. They wish to challenge the interpretations, rulings and jurisdiction of the Chief Compliance Officer, examine certain provisions of the ARC in light of current circumstances, and establish the proper jurisdictional boundaries of the Board in relation to the ARC. The Board's proposed dismissal is a repudiation of the Board's obligation to provide an appropriate forum to have these issues decided. Telling the LDCs that they have no right to seek the Board's rulings on these issues, and requiring instead that individual LDCs come one at a time for exemptions, is not an appropriate response.

**OGILVY
RENAULT**

LLP / SENCOR L. S.C.

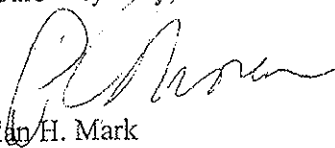
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The Board's position seems to be that all 86 utilities should be required to come forward with a separate proceeding or separate evidence. This seems to us to be very impractical and is not productive, given the inevitable overlap that will occur as each application is filed. We are disappointed that the Board does not recognize the significant savings in regulatory resources inherent in the EDA's Application.

We suggest that the EDA's Application would provide the most efficient mechanism for resolving these issues. These are generic issues and should be dealt with on that basis so that LDCs can make informed business decisions that benefit ratepayers and allow them to implement their conservation and demand management programs.

We respectfully ask the Board to carry on with the proceeding and to consider the Application on its merits.

Yours very truly,



for Alan H. Mark

AHM/il

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February 5, 2007

Alan H. Mark
Ogilvy Renault
Toronto Office
Suite 3800, Royal Bank Plaza, South Tower
200 Bay St., P.O. Box 84
Toronto, Ontario
M5J 2Z4

Dear Mr. Mark:

Re: EB-2006-0232

On September 20, 2006 the EDA made an Application to the Board which sought to amend LDC licences by amending the Affiliate Relationships Code for Electricity Distributors and Transmitters. As you will recall, the Board advised you by letter dated October 29, 2006 that it proposed to dismiss the Application without a hearing under Rule 18 of the Board's *Rules of Practice and Procedure*.

We write as a follow up to your letter of November 6, 2006, which set out your views on the Board's proposal to dismiss the EDA Application without a hearing.

While the Board does not agree with your submissions regarding Rule 18 of our Rules of Practice and Procedure, we have nonetheless decided to proceed with a hearing of your Application.

A Notice of Application will be issued shortly.

Yours truly,

A handwritten signature in black ink, appearing to read "K. Walli".

Kirsten Walli
Board Secretary



EB-2006-0232

NOTICE OF APPLICATION AND HEARING

ELECTRICITY DISTRIBUTORS ASSOCIATION APPLICATION TO AMEND THE ELECTRICITY DISTRIBUTION LICENCES OF ALL LICENSED ELECTRICITY DISTRIBUTORS

On September 20, 2006, the Electricity Distributors Association filed with the Ontario Energy Board (the "Board") an application under section 74 of the *Ontario Energy Board Act, 1998* seeking an order or orders amending the electricity distribution licences of all licensed electricity distributors in Ontario by amending the Board's *Affiliate Relationships Code for Electricity Distributors and Transmitters* (the "Code"). The Code sets out standards and conditions for the interaction between electricity distributors and electricity transmitters, on the one hand, and their affiliates on the other.

The amendments to the Code that are the subject matter of the Application relate to various matters including the provision of services to affiliates, the definition of the terms "confidential information" and "energy service provider" and the sharing of employees. The application also requests interim relief regarding the continuation of compliance activities pending determination of the application by the Board.

The Board has assigned File Number EB-2006-0232 to the Application.

How to see the Application

Copies of the Application are available for public inspection at the Board's office, at the Applicant's office and on the Applicant's website at www.eda-on.ca.

How to Participate

You may participate in this proceeding in one of three ways:

1. You may send the Board a letter of comment. Your letter should include any request to make an oral presentation to the Board, and must be received by the Board no later than **30 days** from the date of publication of this Notice or, if you have been served this Notice directly, no later than 30 days from the date of service.
2. You may request observer status in order to receive documents issued by the Board in the proceeding. Your request must be made by letter received by the Board no later than **10 days** from the date of publication of this Notice or, if you have been served this Notice directly, no later than 10 days from the date of service.
3. You may request intervenor status if you wish to actively participate in the proceeding. Your request must be made by letter of intervention received by the Board no later than **10 days** from the date of publication of this Notice or, if you have been served this Notice directly, no later than 10 days from the date of service. Your letter of intervention must include a description of how you are, or may be, affected by the proceeding; and if you represent a group, a description of the group and its membership. The Board may choose to hold either a written or an oral hearing. The Board will not hold a written hearing if a party satisfies the Board that there is good reason for holding an oral hearing. Your letter of intervention should indicate your preference for a written or oral hearing, and the reasons for that preference. The Board intends to make cost awards available in this proceeding. You must indicate in your letter of intervention whether you expect to seek costs and the grounds for your eligibility for costs. You must provide a copy of your letter of intervention to the Electricity Distributors Association and its counsel at the addresses set out below.

Need more information?

Further information on how to participate may be obtained by visiting the Board's Web site at www.oeb.gov.on.ca or by calling the Consumer Relations Centre at 1-877-632-2727.

How to contact us

In responding to this Notice, please make reference to Board file number EB-2006-0232. It is also important that you provide your name, telephone number and postal address and, if available, an e-mail address and fax number. All communications should be directed to the attention of the Board Secretary at the address below, and be received by **4:45 pm** on the required date.

For your convenience, the Board accepts letters of comment by courier, regular mail, fax or e-mail. The Board accepts letters requesting observer status and letters requesting intervenor status by courier, regular mail or fax. The Board's e-mail address is Boardsec@oeb.gov.on.ca and the Board's fax number is 416-440-7656. Please include the Board file number (EB-2006-0232) in the subject line of your e-mail.

ADDRESSES

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656
Email: boardsec@oeb.gov.on.ca

Mr. Charlie Macaluso
President and CEO
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3700 Steeles Avenue West
Suite 1100
Vaughan ON L4L 8K8

Tel: 905-265-5300
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Counsel for the Applicant:

Mr. Alan Mark
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**IF YOU DO NOT REQUEST TO PARTICIPATE IN THIS PROCEEDING, THE BOARD
MAY PROCEED WITHOUT YOUR PARTICIPATION AND YOU WILL NOT BE
ENTITLED TO FURTHER NOTICE OF THE PROCEEDING.**

Dated at Toronto March 6, 2007

ONTARIO ENERGY BOARD

Original signed by

Peter H. O'Dell
Assistant Board Secretary



EB-2006-0232

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O.1998, c.15 (Schedule B);

AND IN THE MATTER OF an application by the Electricity
Distributors Association pursuant to section 74 of the *Ontario
Energy Board Act, 1998* for an Order or Orders amending
the electricity distribution licenses of all licensed electricity
distributors in Ontario.

PROCEDURAL ORDER NO. 1

On September 20, 2006, the Electricity Distributors Association (the "EDA") filed with the Ontario Energy Board (the "Board") an application under section 74 of the *Ontario Energy Board Act, 1998* (the "Act") seeking an order or orders amending the electricity distribution licences of all licensed electricity distributors in Ontario by amending the Board's *Affiliate Relationships Code for Electricity Distributors and Transmitters* (the "Code"). The application also requests interim relief regarding the continuation of compliance activities pending determination of the application by the Board. The Board has assigned the application Board file number EB-2006-0232.

The Board issued a Notice of Application and Hearing on March 6, 2007. The Applicant published and served the Notice as directed.

Several parties filed with the Board requests for intervenor status. With one exception, the Board has granted intervenor status to all those that requested it, and a list of parties to this proceeding is attached as Appendix "A" to this Procedural Order.

The licence amendments sought by the application are amendments to the Code. The Board believes that there is a threshold question to be addressed in this proceeding; namely, whether amendments to a Code can be made by the Board pursuant to an application to amend a licence under section 74 of the Act, or whether amendments to a Code are to be made pursuant to the notice and comment process set out in sections 70.1 to 70.3 of the Act. The Board will therefore determine this threshold question as a preliminary matter before proceeding further with the application.

The Board considers it necessary to make provision for the following procedural matters. Further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. The EDA shall, on or before **Monday April 23, 2007**, file with the Board and deliver to all other parties a factum addressing the threshold question of whether amendments to a code can be made by the Board pursuant to an application under section 74 of the Act, or whether amendments to a code must be made pursuant to the notice and comment process set out in sections 70.1 to 70.3 of the Act.
2. Board staff and any intervenor may file a factum in response to the EDA's factum on the threshold question. The responding factums shall be filed with the Board and delivered to all other parties, on or before **Thursday May 3, 2007**.
3. The Board will hear all parties' submissions on the threshold question at an oral hearing to be held on **Friday May 18**, and if necessary will extend to **Tuesday May 22, and Thursday May 24, 2007**. The hearing will commence at 9:30 a.m. in the Board's hearing room at 2300 Yonge Street, Toronto, Ontario on the 25th floor.
4. The order of submissions will be EDA, in-chief, other parties, EDA in-reply. All parties shall confine their submissions to the material in their factums and to responding to the factums of other parties and shall address only the threshold issue.

All filings to the Board noted in this Procedural Order must be in the form of 10 hard copies and must be received by the Board Secretary by 4:45 p.m. on the stated date. The Board requests that parties also submit an electronic copy of their filings in searchable, accessible Adobe Acrobat (PDF), if available, or MS Word. Electronic copies should be sent to boardsec@gov.on.ca, with a copy to the case manager, Tobi Baumhard, at tobi.baumhard@oeb.gov.on.ca.

DATED at Toronto, April 12, 2007

ONTARIO ENERGY BOARD

Original signed by

Peter H. O'Dell
Assistant Board Secretary

Appendix "A"

to

Procedural Order No. 1

April 12, 2007

Electricity Distributors Association

**Application for an Order or Orders Amending the Electricity Distribution
Licenses of All Licensed Electricity Distributors in Ontario**

EB-2006-0232

APPLICANT & LIST OF INTERVENORS

**ELECTRICITY DISTRIBUTORS ASSOCIATION
APPLICATION FOR AN ORDER OR ORDERS AMENDING THE ELECTRICITY
DISTRIBUTION LICENCES OF ALL LICENSED ELECTRICITY DISTRIBUTORS
EB-2006-0232
APPLICANT & LIST OF INTERVENTIONS**

April 12, 2007

Applicant

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Association

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Intervenors

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BY EMAIL AND WEB POSTING

April 19, 2007

To: All parties to proceeding EB-2006-0232
All other interested persons

Re: Notice of Intention to State a Case to Divisional Court

On April 12, 2007 the Hearing Panel assigned to this application issued Procedural Order No.1. That Procedural Order identified the following as a threshold question to be addressed in this proceeding: whether amendments to a Code can be made by the Board pursuant to an application to amend a licence under section 74 of the Act, or whether amendments to a Code are to be made pursuant to the notice and comment process set out in sections 70.1 to 70.3 of the Act. The Panel determined that this threshold question should be determined as a preliminary matter before proceeding further with the application, and Procedural Order No. 1 provided for certain procedural matters in support of a hearing of this threshold question.

Determination of this threshold question may have significant implications for the manner in which the Board amends codes. As such, the Board is of the view that it is in the interests of all participants in proceedings before the Board to have certainty on this issue as soon as practical. Since the issue is a question of law, such certainty is most effectively provided in this instance by the court. To that end, the Board intends to state a case on the question to the Ontario Divisional Court, pursuant to section 32 of the *Ontario Energy Board Act, 1998*.

As a number of parties are aware, Board staff has, separate from any activities related to this proceeding, been engaged in research regarding the Ontario Affiliate Relationships Code (ARC) for Electricity Distributors and Transmitters, and ARCs from other jurisdictions. The Board anticipates that staff's research will be completed and made available to the public shortly.

Yours truly,

Original signed by

Peter O'Dell
Assistant Board Secretary



Affiliate Relationships Code for Electricity Distributors and Transmitters (EB-2007-0662)

Board staff engaged in research regarding the Board's Affiliate Relationships Code for Electricity Distributors and Transmitters ("Electricity ARC"), and affiliate relationships codes ("ARCs") from other jurisdictions.

The Board invited interested parties to provide written comments on the Staff Research Paper in order to ensure that staff's identification and characterization of relevant issues were more fully informed by all relevant stakeholders.

Documents

Date	Issue / Document
Aug 13-08	<p>Today the Board has issued a Decision and Order on Cost Awards in relation to EB-2007-0662 - Affiliate Relationships Codes for Electricity Distributors and Transmitters.</p> <ul style="list-style-type: none"> ○ <u>Decision and Order on Cost Awards</u>
Jul 24-08	<p>Today the Board has posted a letter granting all electricity distributors and transmitters further time to object to the cost claims filed by interveners in relation to the comments provided on the Board staff Research Paper and comments on the proposed amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters.</p> <ul style="list-style-type: none"> ○ <u>Letter</u>
May 16-08	<p>Today, the Board has issued final amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters</p> <ul style="list-style-type: none"> ○ <u>Notice of Amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters</u> <ul style="list-style-type: none"> ○ <u>Attachment A: Amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters</u> ○ <u>Attachment B: Comparison Version of Amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters Relative to Proposed Amendments as Proposed on February 11, 2008</u> ○ <u>Attachment C: Amended Affiliate Relationships Code for Electricity Distributors and Transmitters</u> <p>The Board has also issued two Notices of Hearings on Cost Awards in relation to EB-2007-0662 - Affiliate Relationships Codes for Electricity Distributors and Transmitters. Key dates in notices: eligible parties' cost claims due June 5, 2008; distributor objections, if any, due June 19, 2008; and eligible parties' reply submissions due June 26, 2008.</p> <ul style="list-style-type: none"> ○ <u>Notice of Hearing for Cost Awards - Comments on Board Staff Research Paper</u> ○ <u>Notice of Hearing for Cost Awards - Notice and Comment on Proposed Amendments</u>

Mar 17-08	<p>Today the Board has posted the submissions received from stakeholders on the revised proposed amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters.</p> <ul style="list-style-type: none"> ○ <u>Submissions</u>
Feb 11-08	<p>Today, the Board has issued a Notice of Revised Proposal to Amend the Affiliate Relationships Code for Electricity Distributors and Transmitters. Comments on the proposed amendments set out in the Notice must be filed by March 10, 2008.</p> <ul style="list-style-type: none"> ○ <u>Notice of Revised Proposal to Amend the Affiliate Relationships Code for Electricity Distributors and Transmitters</u> ○ <u>Attachment A – Revised Proposed Amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters</u> ○ <u>Attachment B – Comparison Version of revised Proposed Amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters relative to Proposed Amendments as proposed on September 19, 2007 (for information purposes only)</u> ○ <u>Attachment C – Comparison Version of Affiliate Relationships Code for Electricity Distributors and Transmitters containing revised Proposed Amendments and showing revisions relative to Proposed Amendments as proposed on September 19, 2007 (for information purposes only)</u> ○ <u>Attachment D - Affiliate Relationships Code for Electricity Distributors and Transmitters containing revised Proposed Amendments: Clean Version (for information purposes only)</u>
Oct 31-07	<p>Today the Board has posted the submissions received from stakeholders on the proposed amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters.</p> <ul style="list-style-type: none"> ○ <u>Submissions</u>
Sep 19-07	<p>Today, the Board has issued a Notice of Proposal to Amend the Affiliate Relationships Code for Electricity Distributors and Transmitters. Comments on the proposed amendments set out in the Notice must be filed by October 26, 2007.</p> <ul style="list-style-type: none"> ○ <u>Notice of Proposal to Amend the Affiliate Relationships Code for Electricity Distributors and Transmitters</u> ○ <u>Attachment B - Affiliate Relationships Code for Electricity Distributors and Transmitters: Comparison Version (For Information Purposes Only)</u> ○ <u>Attachment C - Affiliate Relationships Code for Electricity Distributors and Transmitters: Clean Version (For Information Purposes Only)</u>
Aug 9-07	<p>The Board has posted submissions received from stakeholders in response to the Staff Research Paper on Affiliate Relationships Code for Electricity Distributors and Transmitters.</p> <ul style="list-style-type: none"> ○ <u>Submissions</u>
Jul 10-07	<p>Today, the Board issued its decision on cost eligibility for stakeholders commenting on the Board staff Research Paper regarding the Affiliate Relationships Code for Electricity Distributors and Transmitters (EB-2007-0662).</p> <ul style="list-style-type: none"> ○ <u>Decision on cost eligibility</u>
Jul 5-07	<p>The Board has posted the remaining requests for participation in the consultations regarding the Board staff Research Paper on the Affiliate Relationships Code for Electricity Distributors and Transmitters posted on June 15, 2007.</p>

	<ul style="list-style-type: none">○ <u>Submissions</u>
Jun 28-07	<p>The Board has posted requests for cost eligibility received in relation to the Board staff Research Paper regarding the Affiliate Relationships Code for Electricity Distributors and Transmitters posted on June 15, 2007. Electricity distributors who wish to object to any of the cost eligibility requests must file their objection with the Board by July 3, 2007.</p> <ul style="list-style-type: none">○ <u>Submissions</u>
Jun 15-07	<p>The Board has posted on its webpage today a Board staff Research Paper that provides information and analysis regarding the Affiliate Relationships Code for Electricity Distributors and Transmitters. The Research Paper identifies areas where stakeholder input would be useful in assisting Board staff to further its work in this area. The cover letter addresses the issues of participation, submissions and cost awards.</p> <ul style="list-style-type: none">○ <u>Cover Letter</u>○ <u>Staff Research Paper</u>

CONTACT

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