



## BULLETIN

**DATE ISSUED: December 19, 2022**

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

**RE: Administering the Industrial Conservation Initiative – Continued Class A Status for Consumers who Implement Conservation Measures**

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**This Bulletin provides guidance to electricity distributors and the Independent Electricity System Operator (IESO) on the administration of the rules in the Global Adjustment (GA) Regulation that allow Class A consumers to remain in the Industrial Conservation Initiative (ICI) where their average monthly demand for electricity drops below the applicable eligibility threshold after participation in an eligible conservation initiative.<sup>1</sup>**

### **Context**

The ICI allows eligible electricity consumers to lower their GA costs by reducing consumption at times of provincial peak demand for electricity. The eligibility requirements for the ICI are set out in [Ontario Regulation 429/04 \(Adjustments under Section 25.33 of the Act\)](#) under the *Electricity Act, 1998* (GA Regulation). Distribution-connected customers who participate in the ICI are known as Class A consumers (transmission-connected customers are known as Class A market participants). To qualify for Class A in a 12-month “adjustment period”, which begins every year on July 1, a consumer’s average monthly peak demand must have exceeded the applicable threshold in the most recent 12-month “base period” ending April 30.<sup>2</sup>

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<sup>1</sup> Previous guidance related to other ICI issues (e.g., load aggregation) was provided in an OEB [Bulletin](#) issued in October 2018 and [FAQs](#) issued in May 2020.

<sup>2</sup> Sections 6 and 7 (Class A) and 6.1.1 and 7.1.1 (Optional Class A) set out the applicable thresholds: 5 MW, 1 MW, and 500 kW (limited to certain NAICS codes). The October 2018 Bulletin (page 2) provides a more detailed description of the thresholds.

The GA Regulation includes provisions allowing Class A consumers who participate in certain conservation and demand management (CDM) initiatives to remain in the ICI even if their average monthly peak demand falls below the applicable eligibility threshold. These “continued status” provisions – namely sections 6.2 and 6.3 (similar rules for Class A market participants are found in sections 7.2 and 7.3) – remove a potential disincentive to participate in an identified CDM initiative; without those provisions, a Class A consumer could lose their Class A status if implementing the CDM initiative resulted in a lower average monthly peak demand.<sup>3</sup>

Only the CDM initiatives listed in sections 6.2(3) and 7.2(3) of the GA Regulation are eligible under the continued status rules, namely:

1. Conservation and Demand Management (CDM) programs and pilots administered by the IESO, a licensed distributor or both of them, that are established or included under,
  - i. an implementation plan as defined in subsection 25.32 (1) of the Act,
  - ii. a directive issued under subsection 25.32 (5) of the Act, or
  - iii. a direction continued under subsection 25.32 (9) of the Act, as amended.
2. IESO demand response auctions and pilots established under the market rules.
3. IESO capacity auctions and pilots established under the market rules, if the contract referred to in subparagraph 3 i of subsection (1) is for demand response resources.

OEB staff has received questions from electricity distributors and consumers about the continued status provisions.

***Participation in an eligible CDM initiative entitles the customer to remain in Class A for as long as the reductions in energy usage endure***

One question that has come up is whether the continued status rules apply only in the adjustment period immediately following the base period in which the customer participated in an eligible CDM program, pilot or project, or whether participation in one base period entitles the customer to maintain Class A status in subsequent adjustment periods.

In OEB staff’s view, the continued status rules apply beyond the first adjustment period. The GA Regulation stipulates that the customer must have participated in the program,

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<sup>3</sup> Although section 6.2 refers to a customer “who does not satisfy the condition set out in paragraph 3 of subsection 6 (1)”, which is that the customer’s average monthly peak demand exceeds 5 MW, OEB staff interprets it (as well as sections 6.3, 7.2 and 7.3) to apply also to a customer who had qualified for Class A based on the 1 MW or 500 kW threshold, but no longer meets that threshold. If the continued status rules were intended to apply only to customers that fall below 5 MW due to a CDM program, they would serve little purpose, as such customers could just opt into Class A under section 6.1.1 (it is highly unlikely a customer would drop from above 5 MW to below 1 MW or 500 kW due to a CDM program).

pilot or project “[d]uring the base period for any adjustment period that began on or after July 1, 2016 in which the consumer was a Class A consumer” (emphasis added); it does not say participation must have been during the most recent base period that is used for the upcoming adjustment period (referred to as the “applicable adjustment period” in the GA Regulation).

To illustrate, to qualify for continued status for the July 1, 2023 to June 30, 2024 adjustment period, the customer need not have participated in an eligible program, pilot or project in the May 1, 2022 to April 30, 2023 base period; for example, it would also suffice if they participated in the May 1, 2019 to April 30, 2020 base period and were a Class A consumer at that time.

In OEB staff’s view, although the GA Regulation does not expressly require ongoing evidence of an enduring effect, such a requirement can be read in to avoid outcomes that are inconsistent with what OEB staff understands to be the intent of the ICI program and the continued status provisions. Imagine, for instance, a factory that had opted into Class A manages to lower its average monthly peak demand to just below the 1 MW opt-in threshold by participating in an eligible CDM pilot project; 10 years later, its average monthly peak demand has risen to 2 MW. The factory then permanently closes a production line, resulting in its average monthly peak demand falling back below 1 MW. In OEB staff’s view, it would run counter to the purpose of the ICI program and the continued status provisions to permit the factory to retain its Class A status in this case, where the reduction in demand had nothing to do with the factory’s long-ago participation in the CDM pilot project. However, in the absence of ongoing evidence, that could be the outcome.

### ***The information that distributors should request from customers***

One of the conditions for continued Class A status is that the customer must give its distributor the information that the distributor requests “to establish that the consumer satisfies the conditions described in paragraph 3 on or before June 15 of the calendar year in which the adjustment period begins.”<sup>4</sup> The “conditions described in paragraph 3” are:

During the base period for any adjustment period that began on or after July 1, 2016 in which the consumer was a Class A consumer,

- i. the consumer entered into a contract with the IESO or with a licensed distributor to participate in an eligible program, pilot or project listed in subsection (3) offered by the IESO, the licensed distributor or both of them, and

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<sup>4</sup> Section 6.2(1) of the GA Regulation includes similar provisions in section 6.3(1) and, in respect of Class A market participants, sections 7.2(1) and 7.3(1).

- ii. the consumer has received, or is entitled to receive, funding or another incentive under the program, pilot or project.

The GA Regulation leaves distributors with some discretion as to what information to request to establish that the customer satisfies those conditions, and stipulates that they shall rely on the information provided by the customer. In cases where the eligible program, pilot or project was offered by the distributor itself, it may be unnecessary to require any information from the customer, as the distributor will know whether the contract was signed and whether the customer received or is entitled to receive funding. In most cases where the eligible program, pilot or project was offered by the IESO, written confirmation from an authorized representative of the customer that the customer satisfies the conditions will suffice (e.g., a simple letter); in other words, it is not necessary for the distributor to ask to see the actual contract with the IESO or any other paperwork from the IESO proving that the customer received or is entitled to receive funding. It is appropriate for the distributor to ask follow-up questions if the information provided by the customer is unclear, or if the distributor has some reason for doubting its veracity or completeness. As the OEB explained in a March 24, 2022 [guidance letter](#) to distributors on the administration of the Ontario Electricity Rebate (OER), “Although distributors are not required ... to police the administration of the OER, and are entitled to rely on information that is required to be provided to them ... the fact is that distributors know their customers.”

In keeping with the view expressed above, in cases where the consumer wishes to remain in Class A in an adjustment period that does not immediately follow the base period in which the eligible CDM initiative was implemented, the distributor should request some evidence that the CDM initiative continues to have an effect on the customer’s average monthly demand. Again, in most cases, written confirmation from the customer will suffice (i.e., it will not be necessary to demand additional supporting documentation) unless the distributor has some reason to doubt the customer’s claim (e.g., to follow our earlier example if the distributor was aware the customer had permanently shut down a production line).

OEB staff’s view is that the requirement for the customer to provide the requested information “on or before June 15 of the calendar year in which the adjustment period begins” means that the information must be provided every year, for as long as the customer wishes to avail itself of the continued status rules.

This guidance applies equally to the IESO, with modifications as the context requires, in administering the continued status provisions for Class A market participants.

**The views expressed in this Bulletin are those of OEB staff and are not binding on a panel of Commissioners. Any enquiries regarding this Bulletin should be directed to the OEB’s Industry Relations email address at [industryrelations@oeb.ca](mailto:industryrelations@oeb.ca).**