



May 6, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge St., Suite 2700
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

**RE: Revised Proposed Amendments to the Transmission System Code
Submission of Canadian Wind Energy Association
Board File No. EB-2008-0003**

These are the submissions of the Canadian Wind Energy Association (“CanWEA”) in respect of the Ontario Energy Board’s (the “Board”) Notice of Revised Proposal (the “Notice”) to Amend A Code – Revised Proposed Amendments to the Transmission System Code (the “Code”), Board File No: EB-2008-0003 (the “Revised Proposed Amendments”) dated April 15, 2009.

CanWEA is a national, not-for-profit association that works on behalf of its members to promote the responsible and sustainable growth of wind energy in Canada. CanWEA has more than 420 members, including wind turbine manufacturers and component suppliers, wind energy project developers, owners and operators, and a broad range of service providers. CanWEA’s activities in Ontario are guided by its Ontario Caucus, which consists of over 100 members.

1. The Transmission Connection Cost Responsibility Review (“TCCRR”) process and any resulting Code amendments should await and address the final outcome of Bill 150, the *Green Energy and Green Economy Act, 2009* (“Bill 150”)

The Board’s Notice includes acknowledgements from the Board that, if passed, Bill 150 may affect the manner in which connections of renewable generation facilities to transmissions systems are planned for, developed and implemented, and as such the policies expressed in the Notice and the

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Revised Proposed Amendments may need to change accordingly. The Board then states that “the two circumstances that are dealt with in the Revised Proposed Amendments (enabler facilities identified in an approved Integrated Power System Plan (“IPSP”) and enabler facilities necessary to connect renewable generation facilities that the OPA has been directed to procure) are both of immediate concern and of an enduring nature, and should therefore be addressed irrespective of any implications that may flow from Bill 150 if and when it is proclaimed into force.” On this basis, the Board is of the view that it is appropriate to move forward with the Revised Proposed Amendments at this time. CanWEA disagrees with the Board’s view in this respect and, for the reasons that follow, submits that confusion and uncertainty would ensue by moving ahead with the Revised Proposed Amendments prior to enactment of Bill 150.

First, Bill 150 is progressing quickly through the legislative process and most observers would conclude that it is highly probable for Bill 150 to become law in the very near future. CanWEA submits that it would have been possible for the Board to have proposed revisions to the Code that specifically account for Bill 150 on the reasonable assumption that Bill 150 will come into law in the near future. Since the Board has decided not to proceed in this manner, CanWEA submits that the Board should defer its decision on any amendments to the Code regarding cost allocation until after Bill 150 is passed into law and at that time reconsider the Revised Proposed Amendments and any additional changes required.

Second, Bill 150 proposes amendments to the Board’s statutory objectives. In particular, the amended Bill 150 issued April 30, 2009 proposes that the Board, in carrying out its responsibilities in relation to electricity, shall be guided by the following new objectives (emphasis added):

- To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer’s economic circumstances.
- To facilitate the implementation of a smart grid in Ontario
- **To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.**

CanWEA submits it would be prudent for the Board to await the outcome of the Bill 150 legislative process so as to allow for the Revised Proposed Amendments to be considered in light of these new statutory purposes. For example, it is the Board’s stated view that the hybrid option is the preferred approach because it “holds the greatest promise in terms of economic efficiency, regulatory predictability and administrative efficiency”. However, this objective does not necessarily coincide with the revised objectives to be established in Bill 150. It is CanWEA’s submission that the Board should consider further whether this option will continue to be the preferred approach if and when Bill 150 is enacted and the Board’s objectives include promoting the use and generation of renewable energy.



Third, in developing the Feed in Tariff Rules (the “FIT Rules”), particularly with respect to the Economic Connection Test (as such term is used in the FIT Rules), the Ontario Power Authority (“OPA”) is attempting to reflect the Revised Proposed Amendments in the FIT Rules. However, the OPA will not be finalizing the FIT Rules unless and until Bill 150 becomes law and the relevant components of the Bill take effect. CanWEA urges the Board to adopt a similar approach with respect to the proposed Code amendments. Given that Bill 150 appears to be very close to becoming law, the Revised Proposed Amendments should not move forward until the outcome of the Bill 150 legislative process is complete. Once there is legislative certainty, the Board should then consider whether any additional revisions to the Revised Proposed Amendments would be appropriate so as to effectively support, harmonize and streamline Code processes and requirements with the FIT Rules - particularly in relation to the Economic Connection Test and processes associated with projects in the FIT Production Line (as such term is defined in the FIT Rules). It is not clear, for instance, how the Economic Connection Test required by the OPA pursuant to the FIT Rules works with the “needs” test considered by the OEB as part of a leave to construct proceeding for an enabler line. Duplication should be avoided. Acting prematurely to establish Code amendments creates lack of certainty and potential regulatory inefficiency.

Related to the premature introduction of the Revised Proposed Amendments is that due consideration has not been given to the obligation of generators to pay for enabler lines in the context of the FIT Rules. Under FIT prices established by the Minister, it appears that generators will have no means to reflect such costs in the commodity pricing. This will negatively affect the economics of renewable energy projects and impede development of these clusters and not fulfill the Board’s new statutory objectives.

Finally, the only issue that should be regarded as essential enough to move forward notwithstanding the fact that Bill 150 is not passed and the FIT Rules are not finalized, is the need to develop the necessary mechanisms to designate transmitters and initiate development and permitting work on the identified rights of way for enabler facilities. These aspects of the Revised Proposed Amendments could be extracted and dealt with separately by the Board under a stand-alone amendment to the Code. The remaining generator-related issues could then be addressed in subsequent Code amendments that appropriately contemplate the final outcomes of the Bill 150 legislative process and the proposed FIT Rules.

2. The length of line used by a generator should not be used as a consideration in determining generator’s pro-rata share of enabler facility cost

The proposed section 6.3.14A to the Code provides that the costs of an enabler facility will be allocated by two mechanisms: (1) nameplate capacity of the generation facilities at the time of connection as a percentage of total capacity, and (2) where the enabler facility is a line connection, the relative length of line used by each generator customer.

This proposed amendment has incorporated a new concept of distance as a means to allocate costs. This is a significant and profound change, which has not previously been raised and has not previously been subject to submissions. CanWEA submits that the use of distance as a cost allocation mechanism should be rejected. In this regard, CanWEA makes the following submissions:



- With respect to the wording of section 6.1.14A, the qualifier "where the enabler facility is a line connection facility" does not provide any clarity since most enabler lines are line connections under the Code. The Board needs to provide greater clarity as to when distance would and would not be used as an allocator. The Board has not found enablers to be network assets; therefore, when would an enabler facility not be a connection facility?
- In their various comments, the Board and Board Staff have expressed the need for a level playing field between generators. The incorporation of the concept of distance is the antithesis of a level playing field since an "accident of geography" favours one generator over another.
- The whole point of the consideration of enabler lines was to connect resources that were geographically-based and distant from the transmission connection. The connection would not occur without the existence of an enabler line. The use of a distance base mechanism contemplates a resource that is mobile, such as gas, where site selection can be carried out on the basis of connection. The very essence of certain renewable resources, such as wind, is that site selection is dictated by the location of the resource. The Board's proposal disregards this fact, is a disincentive for remote resource connection and is counter-intuitive to the original intent of enabler lines.
- The use of distance as a mechanism to allocate cost is a significant change in philosophy for the Board. In the past, the Board has been asked to implement distance based rates. In each of these circumstances the Board has rejected these requests and has advocated a "post stamp" approach. Many of the same arguments against distance based rates apply to cost allocation on the basis of distance. This proposed approach should be avoided for the same reasons.
- The Board has given no reasons for the fundamental change for advocating distance based allocation. It is a new concept not previously discussed in this proceeding and no evidentiary basis has been provided as to why the allocation by distance is fair.

3. Uncertainty regarding the sizing or capacity of an enabler line and the required capital contributions

The Board has proposed a revised definition to "renewable resource cluster" by dropping the reference to a "defined" geographic area. This revised definition creates more ambiguity as to the area in question and the resources to be connected. In addition, it would appear that the capacity of the line in question would not be determined until the leave to construct. Because of the ambiguity of the renewable resource cluster and the fact that the capacity would not be known until leave to construct is sought, there will be less certainty regarding the potential costs of an enabler. Cost certainty will not be improved until well into the regulatory process. As a result, little development will occur in respect of renewable resources until after the leave to construct stage, because of the risk associated with transmission connection. If the renewable cluster was more precise, then the OPA generators would be better able to assess future line capacity and the allocation of costs.



Development of the renewable resource could begin sooner. CanWEA also notes that clarity as to the renewable resource cluster would reduce the risk of under-sizing or over-sizing the line.

4. Single proponents within a cluster will be disadvantaged relative to proponents within clusters that have multiple proponents

The Board's Notice suggests that "the hybrid approach maintains a level playing field for all generators. All generators, whether single or multiple proponents within a cluster, would be required to pay their share of the costs of connection, although single proponents would still be required to take lead responsibility for the transmission connection." CanWEA disagrees specifically with the assertion that single proponents "would still be required to take lead responsibility for their transmission connection". CanWEA submits that the number of proponents is irrelevant. Once a renewable resource cluster and accompanying enabler line is designated, the focus is the exploitation of the resource and not the number of generators that embark on exploiting that resource. As a result, the distinction between single or multiple proponent should not be made. A single proponent will be disadvantaged for the following two reasons.

First, the development of enabler lines will be undertaken by transmitters with the risk and cost of initial development, including permitting up to definitive regulatory approval (i.e. Leave to Construct), being covered (at least initially) by the regulated rate base. On the other hand, single generator proponents will have to bear the development and permitting risks and costs of their connections without such protection.

Second, enabler lines will be constructed, owned and operated by transmitters that can create savings by means of their economies of scale (certainly in the O&M phase) and therefore will be able to achieve a lower unit cost (per km per MW) than can a single generation proponent that has to construct a connection facility.

All of which is respectfully submitted on May 6, 2009.

CANADIAN WIND ENERGY ASSOCIATION



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