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June 30, 2009

VIA MAIL AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
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Dear Ms. Walli:

Re: Notice of Proposed Amendments to the Distribution System Code
Board File Number: EB-2009-0077

Comments of the Vulnerable Energy Consumers Coalition (VECC)

As Counsel to the Vulnerable Energy Consumer's Coalition (VECC), I am writing (per the Board's Notice of June 5, 2009) to provide VECC's comments on the proposed amendments to the Distribution System Code to deal with the issue of cost responsibility as between distributors and generators in relation to the connection of renewable generation facilities.

Background

The Notice contains a background section which outlines the current cost responsibility policy for distributed generation; the changes introduced by the Green Energy and Green Economy Act (the "Act") and the scope of the proposed connection cost responsibility review/amendments.

Cost Responsibility vs. Cost Recovery

In this section the Board expresses the view that "cost recovery is an issue separate and apart from cost responsibility" – where cost responsibility refers to how costs associated with integrating new renewable generation into a distribution system should be apportioned between the generator and the distributor and cost recovery refers to whether the distributor ultimately recovers its share of the costs from its distribution customers or from all customers in the province. The Board concludes that it is appropriate to move forward on the question of "cost responsibility" notwithstanding that the cost recovery framework under section 79.1 of the Act is not yet complete.

VECC respectfully disagrees with this conclusion and approach. In VECC's view it is clear that the government's policy to promote the use and generation of electricity from renewable energy sources (as also reflected in the Board's new objectives) is based on the view that such initiatives will benefit the province overall in terms of not only reliable electricity supply but also new investment, new jobs and environmental benefits[1]. Indeed, the view that renewable generation will bring province-wide benefits is consistent with the introduction of a mechanism (per section 79.1 of the Act) to permit the costs of such activities to be recovered from all consumers in the province and not just the local ratepayers of the distributor whose service area the renewable generation is located. Within this context, VECC submits that the Board's other objective "to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service" takes on added dimensions.

Throughout the balance of the Notice the Board rationalizes its assignment of certain costs to the distributor based on the view that there are broader benefits from renewable generation. However, in VECC's view, it is important to also consider where and how these benefits accrue. If the renewable generation demonstrably benefits the host distributor and its rate payers, then it is appropriate for the host distributor to be held "responsible" and for the costs to be "recovered" from its ratepayers. However, if the renewable generation's benefits accrue primarily to the province overall then the costs should be recovered from all consumers. In such cases, VECC submits that recovery from the host distributors ratepayers would be inconsistent with the Board's objective to "protect the interests of consumers with respect to price".

It is clear that through Regulations the government will be establishing what costs associated with renewable generation should be paid for by all consumers – based on the perspective that the benefits accrue to the province overall. For the Board to make a determination as to what costs can be linked to these wider benefits and, therefore, not recovered from generators at this point in time is to prejudge the Government's decisions and the outcome of the Regulations. Prejudging the outcome of such Regulations could result in either a) the Board deeming renewable generators will be responsible for costs that the Government subsequently determines should be paid by

[1] The news release and supporting materials accompanying the announcement of the Act are a good example of this. See http://www.mei.gov.on.ca.wsd6.korax.net/english/energy/gea/

all consumers or b) the Board deeming distributors responsible for costs its associates with broader benefits that the Government subsequently determines will not be recoverable from all consumers.

The Board has indicated (page 3) that it may need to revisit its policies in event of circumstance (a). However, it has provided no indication or assurance that it will do the same in the event of circumstance (b). VECC submits that in cases where the rationale for holding the distributor responsible for costs rests primarily on the view that there are benefits accruing from the renewable generation to the province overall then the Board should defer to the Government Regulations (or clearly state its intent to ultimately align the treatment in such areas with the Regulations).

In contrast, VECC views it to be entirely within the Board's domain to determine how costs should be split between a renewable generator and the host distributor based on benefits that are deemed to accrue primarily to the host distributor and its rate payers. If the Board decides to proceed with the proposed amendments (or some variation thereof) then it should clearly distinguish/identify those cost that are being "shifted" to distributors on the basis of benefits to parties beyond host distributor and its ratepayers and commit to realigning the DSC with any future Government Regulations under Section 79.1.

Proposed Amendments to the DSC

Connection Cost Responsibility Options

The Board's criteria for evaluating different options includes consideration of the "anticipated beneficiary of the investment; in other words, the identification of distribution system investment that principally benefit the connecting renewable generator, versus those that have significant potential to benefit multiple generators and/or other end-users of a particular distribution system". Consistent with the preceding comments, VECC's concern is that this criteria could result (depending upon the nature of the Government's subsequent Regulations) in the host distributors' ratepayers being responsible for paying costs that are considered as primarily providing benefit to "multiple generators" and/or other end users.

In VECC's view this is inappropriate and could burden the ratepayers of small utilities (e.g. Westario[2]) whose service areas, by virtue of location and topography, have the potential for significant renewable generation development with significant costs that do not provide commensurate direct/local benefits. VECC submits that it is these types of investments where the determination of cost responsibility is best left until after the Government has established the basis for cost recovery. If, by virtue of the Regulations, such costs are not considered to be appropriately recovered from all consumers then they should be payable by the connecting generator. If little to no

[2] Westario's service area includes the eastern shore of Lake Huron near the Bruce Pennisula

benefit accrues to the host distributor and its ratepayers, the recovery solely from the distributor's customers should not be a permissible result.

Connection Assets

The Notice proposes to change the definition of "connection assets" to those facilities that are <u>not</u> shared (or expected to be shared) with another customer. VECC notes that this definition would apply to both load and generation customers. In contrast, the proposed definition for "expansion" makes specific reference to additions to the distribution system in response to a request for additional customer connections (plural). As result, VECC assumes that new/existing facilities serving only one customer will be considered as "connections" whereas those serving (expected to serve) more than one customer will be "expansions".

VECC has two concerns with this approach. First, VECC believes that greater clarity is required regarding how distributors and potential generators should interpret "expected to serve". Since many of these facilities will be in rural areas, new facilities required to integrate a potential renewable generator's supply into the distribution system could pass along public allowances and through private property owned by others where there may be disagreements between the parties as to the "expectation" of additional connections.

VECC's second concern with the proposed change is that it could influence ownership of renewable generation and lead to inefficient results since the generator's responsibility for costs will now differ (see Notice Attachement B) as between connection and expansion assets. For example if two renewable generation sites in close proximity to each other are separately owned then "expansion" will include all new distribution lines required to service both generation sites. However, if the two sites have a common ownership then all of the lines distribution lines required to integrate them with the existing system would be "connections".

Given the proposed amendments regarding cost responsibility, the generators would be "incented" to structure the developments under separate ownerships so as to minimize the "connections assets" they will be responsible for. Such arrangements could be used to foster the development of what would otherwise be inefficient sites for generation facilities. It should be noted that under the current cost responsibility model this does not occur since generators are responsible for both connection and expansion facilities.

Expansions

While the DSC uses "increasing the length of the distribution system" as an example of "expansion"- the four illustrative examples given in the Notice all deal with the rebuilding/converting existing facilities as opposed to creating new ones and the reference in the third paragraph is with regard to reinforcements. All of these examples/references appear to better fit the definition of "enhancements" as currently defined in the DSC as they focus on addressing constraints on the existing system. VECC is concerned that if it is the consideration of these types of investments that guided the Board's conclusion regarding cost recovery for "expansions" then the conclusions may be inappropriate. Also, the examples and references do little to address the interpretation concerns that VECC has already noted above.

In the second and third paragraphs of this section the Board acknowledges that the investment in expansions is primarily for the benefit of the connecting renewable generator. The Notice does suggest that such facilities "over time may benefit other load and generation customers" and notes the provision in the current DSC for a rebate when and if additional generators connect to the facilities. However, the only apparent rationale for the change in cost responsibility between the connecting generator and the distributor appears to be the fact that there maybe no other generators (or loads) connecting to the same facilities in the future with whom the costs could be legitimately shared under the existing DSC.

VECC submits that this is not a rational or logical basis on which to determine that the distributors should be responsible for a portion of the costs. If there is no demonstrable benefit to the host distributor and its customers then, in VECC's view, it is inconsistent with the Board's mandate to "protect consumers" to find that the local distributor and, potentially its ratepayers, should be responsible for the costs. If, as public policy matter and in recognition of the broader benefits attributed to renewable generation, a determination is made that renewable generators should not be responsible for a portion of such expansion costs then it would be appropriate for such costs to be borne by all consumers. As discussed earlier, this is precisely the purpose of the Section 79.1 of the Act and the Board should await the development of the Government's Regulations before determining that the distributor be responsible for such costs.

In the balance of this section the Board lays out its proposal regarding the adoption of a system expansion cap ($/MW) where costs in excess of the cap would be payable by the renewable energy generator. The Notice indicates that the proposed $90,000/MW value is based on a review of the magnitude of the expansion costs for feeder extensions associated with approximately 300 distributed generation projects with an average size of 10 MW. The 10 MW average is critical in translating the range of $/km cost into a $/MW value. However, it is not clear from the presentation whether the 300 generation projects were all renewable projects and therefore whether the 10 MW value is representative of the typical size of a renewable generation project.

VECC notes that under the proposed changes to Section 1.2 of the DSC the cap would be applied to the name plate capacity of the renewable generation facility. While VECC recognizes the simplicity of such an approach, it does not reflect the relative energy and environmental benefits of the facility which would be more closely linked to the average expected output of the facility.

On page 7 the Notice discusses – under the heading of "expansions" - the treatment of upstream upgrades to the system of the host distributor. Again, it is not clear to VECC whether such investments should fall under the category of "expansions" or "enhancements" – based on current/proposed definitions in the DSC. VECC believes further clarification/direction from the Board in this area would be useful. Indeed, such clarification is essential in the case of Loads and Non-Renewable Generation since the revised Appendix B now excludes any provision for "enhancements" in the economic evaluation (per Point 4 of Attachment B of the Notice).

Also, VECC is not at all clear what the intent of the Board is with respect to the treatment of these costs under the proposed amendment. The paragraph states that the Board does not propose to revise the current approach whereby distributors recover the cost from generators. However, it then goes on to confirm that the costs are not to be included in the calculation of the expansion cap – which suggests they are not be included in the calculation of costs to be recovered from customers.

Renewable Enabling Improvements

Contrary to the statement in the first paragraph of this section, VECC notes that the current DSC does allow for the inclusion of a standard amount for "enhancement" in all economic evaluation of expansions.

The current (and proposed) definition of "enhancement" includes modifications to the main distribution system to: a) improve system operating characteristics such as reliability or power quality and b) to relieve system capacity constraints. As VECC understands the Notice, the definition of "renewable enabling improvements" as provided in proposed section 3.3.2 falls under part (a) of the definition of enhancements. Upgrades to the system to relieve capacity constraints created by renewable generators would be a captured under part (b) above. However, with the removal of paragraph (d), there is no provision for the recovery of any "enhancement costs" under the revised version of Appendix B. As a result, the amendments would also preclude distributors from recovering costs aimed at relieving system capacity constraints from new generators (or loads) seeking to connect to their systems.

In VECC's view this represents a fundamental paradigm shift from the current regulatory framework which requires individual customers ensure that others on system are held harmless as a result of their actions (e.g., customers are required to maintain appropriate power factors and other customers aren't expected to bear the costs arising from an individual customer's poor power factor performance).

The Board states (page 8) that it believes investments in renewable enabling improvements are of "broader benefit to the distributor and its existing and future customers (both generators and loads)". However, no explanation is provided as to why this is considered to be the case. Indeed, at first glance, the investments listed appear to only be required because of renewable generation is connecting to the distributor's system and the benefits to customers accrue in that these investments ensure customers are held harmless (in terms of reliability and quality of service) as a result of such connections. As a result, the conclusion reached by the Board is not immediately obvious to VECC.

If it is deemed appropriate that the cost of such renewable enabling improvements (or even the costs to relieve system constraints created by the connection of new renewable generators) should not be borne by renewable generators due to the broader province-wide benefits of renewable generation then it would be reasonable to for the cost to borne by all consumers in the province. However, under the current statutory/regulatory framework it is the Government and not the OEB that will make such determinations.

VECC notes that the types of investments associated with renewable enabling improvements could also apply to non-renewable generation projects and even – in some cases - to new load customers. Under proposed amendments, which exclude any provision for enhancements from the economic evaluation, it appears that such costs would also be the responsibility of the distributor. The Board justifies this on the basis of maintaining consistency in the treatment of enhancements and the view that "when considered from the perspective of the persons that are expected to benefit, it is appropriate that the distributor bear the costs of all enhancements".

VECC notes that while in the case of the renewable generation project the distributor may well be reimbursed by all consumers; for other customers connecting to the system any costs directed to the distributor will eventually be paid by it ratepayers. However, there is no explanation provided in the Notice as to why or how the other ratepayers of the distributor are considered to be the primary beneficiaries of enhancement investments triggered by new customers.

The only rationale would be that existing customers should be responsible for investments needed to maintain their current service quality as result of new customers being connected to the distribution system. Again, in VECC's view this represents a fundamental paradigm shift from the current regulatory framework which requires individual customers ensure that others on system are held harmless as a result of their actions.

Distribution System Planning Process

The current proposal is that all investments included in a distributor's approved expansion plan would be the responsibility of the distributor (as opposed to the generator) on the grounds that "these investments will be planned prior to, or regardless of, a specific generator requesting connection and will likely have broader benefit to the distributor and its existing and future customers (both generators and loads)". VECC has two fundamental concerns with this approach. First, it reflects an unrealistic view of planning. A distributor's expansion plans cannot be developed in a vacuum and, indeed, a distributor would be roundly criticized if its proposed plan did not reflect known (and perhaps even anticipated) customer plans. As a result, the investments put forward in distributor's expansion plan are likely to include expansions anticipated as a result of new customers. It is inappropriate to suggest that customers should then not be responsible for the costs incurred specifically due to the need to serve them because the distributor properly planned to meet their needs and provided the plan to the OEB. The other concern is that this approach precludes distributors building "enabling facilities" similar to what are envisioned at the transmission level under the pending amendments to the TSC – where the facilities would be built by the distributor but eventually paid for by generators.

Conclusions

In VECC's view the proposed amendments are premature as they need to be closely aligned with the Government's pending Regulations under section 79.1 of the Act. Also, VECC believes that alignment of cost responsibility with the benefits that will accrue to the host distributor and its ratepayer has not been adequately demonstrated to support the proposed changes.

However, should the Board decide to proceed with the amendments at this time then, in VECC's view:

- Greater clarify is required regarding the definition of connection versus expansion versus enhancement. In doing so, due consideration must be given to the fact that the definitions apply to all new customers not just renewable generation facilities and that the definitions can affect the structure and development of renewable energy projects.
- Clearer rationale should be provided for those costs that are being shifted to distributors with a view to distinguishing those costs shifted on the basis that renewable generators provide broader benefits (outside the local distributor's service area). Furthermore, the OEB should commit to aligning the DSC provisions regarding the treatment of these costs with any Regulations issued under section 79.1 of the Act.

Please contact Bill Harper (416-348-0193) if you have any questions or require clarification.

Yours truly,

Michael Buonaguro