

July 2, 2009

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File 10606

Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2701 - 2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms Walli:

Re: Notice of Proposed Amendments to the Distribution System Code – EB-2009-0077

Introduction:

On June 5, 2009, the Ontario Energy Board issued a Notice of Proposal to Amend a Code ("Notice") setting out proposed amendments to its Distribution System Code ("DSC"). The proposed amendments would revise the Board's current approach to assigning cost responsibility as between a distributor and a generator in relation to the connection of renewable generation facilities to distribution systems. The changes are intended to facilitate implementation of the Government's policy objectives regarding renewable generation.

The Board is seeking comments on the proposed amendments. These are the submissions of the Consumers Council of Canada ("Council").

Submissions:

As the Board has set out in its Notice, cost responsibility associated with investments in distribution infrastructure is governed principally by the DSC. Currently, with respect to generation connections, a generator that connects to a distribution system is responsible for paying for all of the costs of connecting its generation facility to the distribution network, including any costs associated with distribution and transmission upgrades beyond the connection point that are required to accommodate the generation facility. These costs are not paid for by the distributor, nor added to rate base. There is also a provision for a rebate to the extent a subsequent generator connects and obtains the benefit of reinforcements paid for by an earlier generator.

The Council believes this approach has been a fair and balanced one for generators, local distribution companies ("LDCs"), and their customers.

The Board has indicated in its Notice that certain amendments to the *Ontario Energy Board Act, 1988*, as set out in the *Green Energy Act, 2009* ("GEA"), make it clear that connection or renewable energy facilities is a policy matter of priority for the Government. Accordingly the

Board has stated, “In order to facilitate the implementation of that policy as expeditiously as possible, the Board believes that it is more desirable to move forward its review of the assignment of cost responsibility associated with the connection of renewable generation facilities to distribution systems.” (Notice, p.3)

The Board points to the following provisions in the GEA that are relevant to the issue of cost responsibility associated with the connection of renewable generation facilities:

- The Board will have a new objective to “promote the use and generation of electricity from renewable generation 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”;
- New deemed conditions of licence will be introduced that require distributors and transmitters to (a) file for Board approval, in the manner and at the times mandated by the Board, plans for the expansion or reinforcement of their respective systems to accommodate the connection of renewable energy generation facilities; and (b) expand or reinforce their respective systems to accommodate the connection of renewable energy generation facilities in accordance with their respective Board-approved plans or as otherwise mandated by the Board or prescribed by regulation;
- The GEA will introduce a mechanism whereby Board-approved costs incurred by a distributor to make an “eligible investment” for the purpose of connecting or enabling the connection of a “qualifying generation facility” to its distribution system may be recovered through contributions payable by all consumers throughout the Province. Details of the investments to which this mechanism apply must await the issuance of the necessary regulation;
- The GEA will introduce a new regulation-making power that empowers the Lieutenant Governor in Council to make regulations prescribing circumstances under which a transmitter or distributor shall bear the costs of construction, expansion or reinforcement associated with the connection of a renewable energy generation facility to the transmitter's transmission system or the distributor's distribution system. The Board notes that to the extent any

regulation is made, the Board may need to revisit the policies proposed in this Notice. (Notice, pp. 2-3)

Given these new provisions, the Board is proposing changes to the DSC to revise its approach in assigning cost responsibility as between a distributor and a generator in relation to renewable generator connections to distribution systems. The Council has the following overview comments:

1. Notwithstanding the provisions of the GEA, a critical objective for the Board remains, “To protect consumers with respect to prices and the adequacy, reliability and quality of electricity service”. In proposing amendments to its various codes, the Board must always take this objective into account and it cannot be superseded by other provisions of the GEA;
2. The Board refers throughout the Notice to “cost responsibility” as between a distributor and a generator. It is important to note that ultimately costs incurred by distributors will be paid by its customers. Cost responsibility is effectively between generators and LDC customers;
3. The GEA includes a new objective to “promote” the use and generation of electricity from renewable energy sources, but the Council submits that this does not mean that LDC ratepayers necessarily have to subsidize the renewable generators. The principle of cost-causality and the determination as to who benefits from an investment should remain the basis on which generation and distribution costs are allocated. In addition, “promoting” the use and generation of electricity could be limited to ensuring that connections are undertaken on a timely basis;
4. Although the GEA will introduce a mechanism whereby Board-approved costs incurred by a distributor to make an “eligible investment” for the purpose of connecting or enabling the connection of a “qualifying generation facility” to its distribution system may be recovered through contributions payable by all consumers throughout the Province, the Government has yet to establish how and under what circumstances this mechanism will work. The Council submits that until there is clarity around the application of the mechanism it would be premature to alter the existing connection provisions in the DSC. The Government needs to decide what costs related to renewable generation should be recovered on a Province-wide basis.
5. The Board, through its proposed code changes, is making an assumption that expansions, in addition to benefiting the renewable generator, may benefit load and other generation customers over time, and has proposed a mechanism that the costs be shared between the generator and the distributor. The Council believes that the proposed “renewable energy expansion cost cap” is arbitrary and not consistent with the principle of cost causality. There is an assumption that distribution customers will benefit from every connection which may not be the case. This is an example of how it is premature to propose a mechanism like

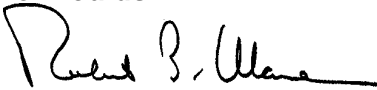
this until the Government provide clarity on how the costs of renewable generation will be recovered.

The Council submits that the rules currently set out in the DSC regarding cost responsibility between distributors and generators are appropriate. They should remain in place until the Government establishes how, and to what extent, costs related to renewable generation will be recovered from Ontario consumers. To establish rules now, regarding cost responsibility between generators and distributors, would be premature. What could result are different policies being applied depending upon when connections are made. Certain ratepayers in the Province maybe required to pay distribution costs related to renewable generation in their service area if those connections are made prior to the establishment of any policies made pursuant to section 79.1 of the GEA. Once the Government's policy is established other ratepayers may have the benefit of costs incurred in their franchise area being spread across all customers in the Province.

Until the intent of the legislation is clear and the regulations made pursuant to section 79.1 of the GEA have been finalized, the Council urges the Board to maintain the current rules set out in the DSC regarding cost responsibility. The principle of cost causality and the determination of what parties benefit directly from of an investment should continue to guide the Board. Generators should continue to be responsible for their connection costs and expansion costs that are triggered by the connection. Unless there can be an explicit benefit to the distribution system determined, those current rules should apply. When, or if, the Government determines the extent to which costs related to renewable power are to be paid for by all consumers in the Province, the Board can assess how that policy objective is to be implemented and the potential impacts on the DSC.

Yours very truly,

WeirFoulds LLP



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cc: Joan Huzar, Consumers Council of Canada

cc: Julie Girvan

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