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NOTICE OF AMENDMENT TO A CODE

**AMENDMENTS TO THE RETAIL SETTLEMENT CODE AND
THE DISTRIBUTION SYSTEM CODE**

BOARD FILE NO: EB-2009-0303

**To: All Licensed Electricity Distributors
All Licensed Generators
All Participants in Consultation Processes EB-2008-0102, EB-2009-0088
and EB-2009-0077
All Other Interested Parties**

The Ontario Energy Board (the "Board") has today issued amendments to the Retail Settlement Code (the "RSC") and the Distribution System Code (the "DSC") under section 70.2 of the *Ontario Energy Board Act, 1998* (the "Act"). The Board has today also issued a revised determination under sections 1.8 and 3.2 of the RSC.

I. Background

On August 5, 2009, the Board issued a Notice of Proposal to Amend a Code (the "August Notice") in which it proposed amendments to the RSC and the DSC (the "August Proposed Amendments") regarding the settlement and billing of generation facilities that would qualify under the "feed-in-tariff" ("FIT") program to be administered by the Ontario Power Authority (the "OPA").

Implementation of a FIT program, designed to procure energy from renewable energy sources using standard program rules, standard contracts and standard pricing, is contemplated in amendments to the *Electricity Act, 1998* set out in the *Green Energy and Green Economy Act, 2009*. Those amendments were proclaimed into force on

September 9, 2009, as were a number of amendments to the *Ontario Energy Board Act, 1998*.

As indicated in the August Notice, as part of the FIT initiative the OPA is developing rules that are specific to – and that are intended to facilitate the increased development and use of – renewable generation of 10 kW or less. These rules, referred to as “microFIT”, are expected to greatly increase roof-mounted solar photovoltaic generation. Most of the microFIT projects are expected to have an associated load.

The August Proposed Amendments were designed to facilitate the timely and efficient implementation of the FIT program and the more orderly administration of that program by distributors. In summary, under the August Proposed Amendments the Board proposed as follows in relation to the settlement and billing of embedded retail generators that have a FIT contract:

- i. Customer choice of configuration should be maintained: Customers should retain the ability to choose the connection configuration that they consider optimal. Accordingly, embedded retail generators may be connected either directly or indirectly to a distribution system and, if indirectly connected, may be metered “in parallel” with the associated load customer (i.e., the meter for the generation facility is located upstream of the load meter) or “in series” with the associated load customer (i.e., the meter for the generation facility is located downstream of (or “behind”) the load meter).
- ii. Gross load billing should be used for all configurations: Settlement and billing in relation to a renewable generation facility that has a FIT contract and the associated load customer should be based on a “gross load billing” approach. Under the Board’s current rules, this would already be the case for embedded retail generators that connect directly or that connect indirectly “in parallel”. The proposed approach would, however, change the basis for settlement and billing applicable to FIT-contracted embedded retail generators that connect indirectly “in series”.
- iii. An embedded retail generator should be treated as a separate account, regardless of configuration: Distributors should open a separate account for any embedded retail generator that has a FIT contract. This is already the expectation under the Board’s current rules in relation to embedded generators that connect directly or that connect indirectly “in parallel”. The

proposed approach, however, would confirm that this should be the case for FIT-contracted embedded retail generators that connect indirectly “in series” as well.

Further detail regarding the current regulatory treatment of embedded retail generation, the August Proposed Amendments and the rationale for the Board’s proposed approach as summarized above may be found in the August Notice.

II. Overview of Comments Received

The Board received 21 comments on the August Proposed Amendments from a variety of stakeholders, including the OPA, the Ontario Ministry of Agriculture, Food and Rural Affairs, and representatives of distributors, generators, ratepayers and aboriginal communities. These are available for viewing on the Board’s website at www.oeb.gov.on.ca on the “DSC & RSC Proposed Amendments” webpage on the “OEB Key Initiatives” portion of the “Industry Relations” section of the website.

A. Customer Choice for Connection Configuration

Stakeholders that commented on the proposal to retain customer choice in relation to connection configurations were uniformly supportive of the Board’s approach.

B. Gross Load Billing

Stakeholders were divided on the issue of gross load billing. Distributors were supportive of the approach. Certain representatives of ratepayers were also generally supportive, although not all without reservation. Others were opposed to the approach.

While the comments of participants varied, many of the concerns expressed by participants can be grouped together and summarized as follows:

- i. Gross load billing will adversely affect the economic viability of certain types of embedded renewable generation projects, most notably biogas projects.
- ii. There is an insufficient basis on which to determine the all of the costs, benefits and/or implications of the proposed approach, both generally and in the context of different generator technologies and sizes. Specific concerns included the tax implications of the proposed approach, the application of distribution loss factors

under the proposed approach and the interaction of the August Proposed Amendments with other initiatives relating to the connection of renewable generation facilities that are currently under way. Some stakeholders suggested that the August Proposed Amendments should be deferred for these reasons, while others proposed that the Board be prepared to revisit its approach if warranted once the FIT program has been operational for some period of time. Some stakeholders suggested that greater clarity in relation to these issues is required.

The Board acknowledges that the financial impact of gross load billing could be greater for some types of generation technology than others, depending on the FIT contract price (which is not set by the Board). The OPA, which is responsible for administering the FIT program, has expressed support for the gross load billing approach, and has not identified the approach as a concern in relation to the economic viability of any particular type of project.

The Board also acknowledges that all of the costs, benefits and implications of the proposed gross load billing approach for all potential FIT contracting parties and configurations may not be readily ascertainable in a definitive way at the present time. There is, however, a very practical need to move expeditiously to ensure that the Board's approach to billing and settlement can facilitate the timely implementation of the FIT program and the orderly administration of the program by distributors. The Board remains of the view that the gross load billing approach is the preferred approach for that purpose at this time, in that it is the one most likely to achieve the regulatory objectives of administrative simplicity, standardization and the minimization of costs and delays associated with immediate CIS system investments or upgrades. As and when issues arise that appear to have material implications for the operation of the FIT program, the Board will address them as warranted at the relevant time. In the meantime, the Board does not believe that it is necessary or appropriate to defer implementation of its proposed approach.

The Board is aware of the potential interaction between the issues under consideration in this consultation and those being addressed in other on-going initiatives relating to the connection of renewable generation facilities, and understands the added complexity that this can present. The Board is mindful of the need to ensure that all of the policies under consideration are complementary and will result in the implementation of a cohesive framework.

Two stakeholders raised questions related to distribution losses. A representative of distributors expressed the view that the RSC permits the use of “a default figure for the loss factor of 1% or a loss factor approved by the OEB when performing the necessary settlement calculations”. The Board does not agree that a loss factor figure of 1% should be applied as a default for microFIT-contracted generators when they are metered on the secondary side of a distributor-owned transformer. The use of the 1% loss factor would be appropriate as a site-specific loss factor in situations where the generator customer is connected to the primary distribution system through a generator-owned transformer but the metering is located on the secondary (generation) side of the transformer. Another participant suggested that the Board should clarify how distribution losses should be treated under a gross load billing approach. The Board confirms that, under a gross load billing approach, losses would be determined in accordance with the RSC and then applied to the load customer’s gross consumption (all of the energy consumed by the customer, regardless of whether it was provided by the embedded retail generator or withdrawn directly from the distribution system).

Two participants noted that the current version of the smart metering meter data management and meter data repository (“MDM/R”) cannot accept readings from bi-directional smart meters. The Board acknowledges that this is currently the case. The MDM/R issue arises from the metering required for the “in series” configuration itself, regardless of the billing approach (net load versus gross load) that is applicable. The Board notes that, for certain premises or buildings, the “in series” configuration is the only practical option. The Board remains of the view that the option should remain available to ensure that such consumers are able to participate in the FIT program, and that this benefit outweighs the additional time and cost that may be required for purposes of billing and settlement.

The Board is therefore satisfied that the gross load billing approach set out in the August Proposed Amendments should be implemented in relation to embedded retail generation facilities that have a FIT contract. As such, a load customer associated with a FIT-contracted embedded retail generator will be billed for non-competitive electricity costs and other volume-based charges, including the global adjustment, based on the load customer’s gross load (all of the energy consumed by the customer, regardless of whether it was provided by the embedded retail generator or withdrawn directly from the distribution system), adjusted for losses as required.

C. *Separate Accounts*

Stakeholders that commented on the proposal to treat embedded retail generators as separate accounts regardless of configuration were also uniformly supportive of the Board's approach. One stakeholder suggested that the related issue of the service charge to be applied to embedded retail generator accounts should be addressed now, rather than through a separate process as contemplated in the August Notice. The Board is of the view that a rates proceeding under section 78 of the Act is the appropriate forum in which to address service charges for embedded retail generator customers, and intends to initiate a proceeding for that purpose in the near future. Participants that wish to do so may reiterate their concerns regarding cost causality and just and reasonable rates in the context of that proceeding.

Two participants commented that the proposed approach should not preclude the consolidation of accounts into a single bill or the appropriate off-setting of charges and credits. Other than applicable conditions of a distributor's rate order and associated requirements, the Board's regulatory instruments do not generally preclude a customer from reaching an agreement with a distributor as to the off-setting of charges and credits in relation to multiple accounts. The Board emphasizes, however, that any such arrangements should be mutually agreed by the parties, and not unilaterally imposed by the distributor. In addition, some of the load customers associated with an embedded retail generator are low-volume consumers to whom the provisions of O. Reg. 275/04 (Information on Invoices to Low-Volume Consumers of Electricity) apply. It is the responsibility of each distributor to ensure that any billing arrangements that might be agreed with a low-volume consumer are not inconsistent with the requirements of O. Reg. 275/04.

III. **Adoption of August Proposed Amendments**

The Board has considered the comments received, and has determined that no changes need to be made to the August Proposed Amendments. The August Proposed Amendments have therefore been adopted by the Board in the form in which they were proposed in the August Notice. The amendments to the RSC as adopted are set out in Attachment A to this Notice, and the amendment to the DSC as adopted is set out in Attachment B to this Notice. As indicated in the August Notice, these amendments will come into force today, being the date on which the amendments are published on the Board's website after having been made by the Board.

The Board has noted the comment made by one stakeholder regarding the desire that common terminology be used by the Board and the OPA in relation to the FIT program. The Board agrees that this is a desirable objective, and is mindful of it, but does not believe that the amendments themselves are an issue in that regard.

The Board has also noted the comment made by a participant regarding the need for, and importance of, appropriate communications regarding the design and implementation of the implementation and administration of the FIT program. The Board agrees but notes that the OPA, as the entity responsible for the FIT program, is expected to take a lead role in FIT-related communications. For its part, the Board will take such steps as it considers appropriate in relation to communications related more specifically to the Board's regulatory requirements as they apply to the FIT program.

IV. Anticipated Costs and Benefits

The anticipated costs and benefits of the August Proposed Amendments were set out in the August Notice, and interested parties should refer to the August Notice for further information in that regard.

The Board notes that the current limitations of the MDM/R as described above may entail incremental administrative and other costs beyond those that were considered by the Board when it issued the August Notice. However, the Board remains of the view that the benefits of the August Proposed Amendments will outweigh any costs.

V. Revision to Settlement Determination

The Board confirms that the amendments apply to settlement and billing only in relation to a renewable generation facility that has a contract with the OPA under the FIT program. As indicated in the August Notice, all other embedded retail generation, including those with a contract under the Renewable Energy Standard Offer Program ("RESOP"), will remain subject to the settlement and billing rules as they currently exist.

Some participants suggested that the Board consider extending the application of the amendments to embedded retail generation that has a RESOP contract, to avoid the time and cost associated with the management of two different approaches to settlement and billing. The Board remains of the view that it is appropriate for the current rules to continue to apply to all embedded retail generation other than those that

have a FIT contract. While the Board is mindful of the desire to minimize costs and administrative efforts, embedded retail generation projects that were put into place under the RESOP program were developed on the basis that settlement and billing would be effected on a net load basis. The Board does not believe that it is appropriate to change the basis for billing and settlement in mid-contract.

As indicated in the August Notice, adoption of the August Proposed Amendments triggers the need for the Board to revise the Board's November 1, 2006 determination made under sections 1.8 and 3.2 of the RSC regarding the settlement rules for embedded retail generators (the "Settlement Determination"). The revised Settlement Determination is attached as Attachment C to this Notice. The revisions make it clear that the Settlement Determination does not apply to FIT-contracted generation.

This Notice, including the attached amendments to the RSC and the DSC and the attached revised Settlement Determination, will be available for public viewing on the Board's web site at www.oeb.gov.on.ca and at the office of the Board during normal business hours.

Any questions regarding the amendments to the RSC or the DSC described in this Notice and set out in Attachments A and B or the revised Settlement Determination set out in Attachment C should be directed to the Market Operations Hotline at market.operations@oeb.gov.on.ca or 416-440-7604. The Board's toll free number is 1-888-632-6273.

DATED at Toronto, September 21 2009
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Attachments: Attachment A: Amendments to the Retail Settlement Code
 Attachment B: Amendments to the Distribution System Code
 Attachment C: Revised Settlement Determination

Attachment A

Amendments to the Retail Settlement Code

Note: The text of the amendments is set out in italics below, for ease of identification only.

1. Section 3.2 of the Retail Settlement Code is amended by adding the following paragraph immediately before Equation 3.2(e):

Notwithstanding any other provision of this Code, where an embedded retail generator that has a contract issued under the feed-in-tariff program referred to in section 25.35 of the Electricity Act is connected on the customer side of a connection point (as set out in section 1.9 of the Distribution System Code), the charges for competitive electricity costs payable by the associated load customer shall be calculated based on the total amount of electricity consumed at the load customer's premises, whether withdrawn from the distribution system or supplied by the embedded retail generator. This rule applies regardless of the electrical configuration of the load and generation meters.

2. Section 4.1 of the Retail Settlement Code is amended by adding the following paragraph to the end of that section:

Notwithstanding any other provision of this Code, where an embedded retail generator that has a contract issued under the feed-in-tariff program referred to in section 25.35 of the Electricity Act is connected on the customer side of a connection point (as set out in section 1.9 of the Distribution System Code), the charges for non-competitive electricity costs payable by the associated load customer shall be calculated based on the total amount of electricity consumed at the load customer's premises, whether withdrawn from the distribution system or supplied by the embedded retail generator. This rule applies regardless of the electrical configuration of the load and generation meters.

3. Section 4.2 of the Retail Settlement Code is amended by adding the following paragraph to the end of that section:

Notwithstanding any other provision of this Code, where an embedded retail generator that has a contract issued under the feed-in-tariff program referred to in section 25.35 of the Electricity Act is connected on the customer side of a connection point (as set out in section 1.9 of the Distribution System Code), the charges for distribution services payable by the associated load customer shall be calculated based on the total amount of electricity consumed at the load customer's premises, whether withdrawn from the distribution system or supplied by the embedded retail generator. This rule applies regardless of the electrical configuration of the load and generation meters.

Attachment B

Amendment to the Distribution System Code

Note: The text of the amendment is set out in italics below, for ease of identification only.

Section 1 of the Distribution System Code is amended by adding the following immediately after section 1.9:

1.10 Separate Accounts for Embedded Retail Generators

Where an embedded retail generator that has a contract issued under the feed-in-tariff program referred to in section 25.35 of the Electricity Act is connected on the customer side of a connection point (as set out in section 1.9), the distributor shall open a separate account for the embedded retail generator and shall for settlement purposes treat the embedded retail generator as a separate customer, separate and apart from any associated load customer. This rule applies regardless of the electrical configuration of the load and generation meters and regardless of whether the embedded retail generator and the associate load customer are the same person or entity.

Attachment C

Revised Settlement Determination

Note: The text of the revisions is set out in underlined italics below, for ease of identification only.

Revised Determination Relating to Section 3.2 of the Retail Settlement Code: Clarification of Rules for Embedded Retail Generators with an OPA Contract that are Indirectly Connected to a Distribution System

The Ontario Energy Board (the “Board”) has made this revised determination under sections 1.8 and 3.2 of the Retail Settlement Code (the “RSC”).

Definitions

“billing period” means the customary or usual period of time for which a distributor bills a load customer for the consumption of electricity provided by the distributor;

“embedded retail generator” has the same meaning as in the RSC;

“indirectly connected generator” means a generation facility that is connected on the customer side of a connection point to the distribution system whose owner has a contract with the OPA, other than a contract issued under the feed-in tariff program referred to in section 25.35 of the Electricity Act, 1998;

“load customer” means a person that consumes electricity provided by a distributor; and

“OPA” means the Ontario Power Authority.

Clarification Regarding Section 3.2 of the RSC

The following provision applies to any load customer that has an indirectly connected generator attached to it:

If in a billing period the recorded meter amounts for a load customer results in a negative payment by the load customer to the distributor (or equivalently, a credit to the load customer), the distributor shall treat the negative amounts as zero. The distributor shall not make any payment or provide any credit to the load customer. For greater clarity, this applies to any type of meter and any recorded quantity.

Non-Application to FIT-Contracted Generation

For greater certainty, the provision above does not apply where the indirectly connected generator has a contract with the OPA issued under the feed-in tariff program referred to in section 25.35 of the Electricity Act, 1998.