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September 24, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli

**Re: Revised Proposed Amendments to the Distribution System Code
Regarding Connection Cost Responsibility for Renewable
Distributed Generation (EB-2009-0077)**

The Power Workers' Union ("PWU") represents a large portion of the employees working in Ontario's electricity industry. Attached please find a list of PWU employers.

The PWU is committed to participating in regulatory consultations and proceedings to contribute to the development of regulatory direction and policy that ensures ongoing service quality, reliability and safety at a reasonable price for Ontario customers. To this end, please find the PWU's comments on the *Revised Proposed Amendments to the Distribution System Code (EB-2009-0077)*.

We hope you will find the PWU's comments useful.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

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cc: John Sprackett
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File 10329

List of PWU Employers

AMEC Nuclear Safety Solutions
Atomic Energy of Canada Limited (Chalk River Laboratories)
BPC District Energy Investments Limited Partnership
Brant County Power Incorporated
Brighton Beach Power Limited
Brookfield Power – Lake Superior Power
Brookfield Power – Mississagi Power Trust
Bruce Power Inc.
Capital Power Corporation Calstock Power Plant
Capital Power Corporation Kapuskasing Power Plant
Capital Power Corporation Nipigon Power Plant
Capital Power Corporation Tunis Power Plant
Coor Nuclear Services
Corporation of the City of Dryden – Dryden Municipal Telephone
Corporation of the County of Brant, The
Coulter Water Meter Service Inc.
CRU Solutions Inc.
Ecaliber (Canada)
Electrical Safety Authority
Erie Thames Services and Powerlines
ES Fox
Great Lakes Power Limited
Grimsby Power Incorporated
Halton Hills Hydro Inc.
Hydro One Inc.
Independent Electricity System Operator
Inergi LP
Innisfil Hydro Distribution Systems Limited
Kenora Hydro Electric Corporation Ltd.
Kincardine Cable TV Ltd.
Kinectrics Inc.
Kitchener-Wilmot Hydro Inc.
London Hydro Corporation
Middlesex Power Distribution Corporation
Milton Hydro Distribution Inc.
New Horizon System Solutions
Newmarket Hydro Ltd.
Norfolk Power Distribution Inc.
Nuclear Waste Management Organization
Ontario Power Generation Inc.
Orangeville Hydro Limited
Portlands Energy Centre
PowerStream
PUC Services
Sioux Lookout Hydro Inc.
Sodexho Canada Ltd.
TransAlta Energy Corporation - O.H.S.C. Ottawa
Vertex Customer Management (Canada) Limited
Whitby Hydro Energy Services Corporation

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EB-2009-0077

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a consultation process regarding proposed amendments to the Distribution System Code associated with connection cost responsibility of renewable distributed generation.

Comments of the Power Workers' Union

I. BACKGROUND

1. The Ontario Energy Board ("OEB" or the "Board") issued a Notice of Proposal to Amend a Code on June 5, 2009 ("June Notice") in which it proposed amendments ("June Proposed Amendments") to the Distribution System Code ("DSC") that would revise the Board's current approach to assigning cost responsibility between a distributor and a generator with regard to the connection of renewable generation facilities to distribution systems to facilitate the implementation of the Government's policy objectives for renewable generation. Under the June Proposed Amendments:

- **distribution system investments related to the connection of renewable generation facilities would be classified within three general categories: "connection assets"; "expansions"; and "renewable enabling improvements";**
- **"connection assets" would continue to be paid for by generators;**
- **cost responsibility for "expansions" would be assigned as follows:**
 - **where the expansion is in a Board-approved plan or is otherwise approved or mandated by the Board, the distributor would be responsible for all of the costs of the expansion; and**
 - **in all other cases, the distributor would be responsible for the costs of the expansion up to a "renewable energy expansion cost cap" (\$90,000 per MW of capacity of the connecting generator), and the generator would be responsible for all costs above that amount; and**
- **the distributor would bear all of the costs of "renewable enabling improvements."**

2. On September 11, 2009 the Board gave notice (“September Notice”) under section 70.2 of the Ontario Energy Board Act, 1998 (the “Act”) of its revised proposed amendments to the DSC.

3. At the time the June Notice was issued the *Green Energy and Green Economy Act, 2009* (the “GEGEA”) had received Royal Assent, but had not yet been proclaimed. In the September Notice the Board notes that all of the amendments to the *Electricity Act, 1998* and all of the amendments to the Act contained in the GEGEA relevant to this consultation were proclaimed into force on September 9, 2009 including the addition of the Board’s new objective to promote generation from renewable energy sources, as well as the amendment to the Act (section 79.1) regarding the recovery of distributor costs associated with generator connections.

4. The September Notice also states that:

In addition, on September 9, 2009 a regulation was filed that completes the legislative framework for the cost recovery mechanism set out in section 79.1 of the Act (O. Reg. 330/09 (Cost Recovery re Section 79.1 of the Act)). In summary, the legislative framework provides as follows:

- **a distributor is entitled to compensation (also referred to as rate protection) for Board-approved costs incurred in making an “eligible investment” to connect or enable the connection of a “qualifying generation facility”;**
- **an investment is an “eligible investment” if the associated costs are the responsibility of the distributor as set out in the DSC;**
- **a “qualifying generation facility” is a generation facility that satisfies the criteria necessary to be a renewable energy generation facility;**
- **the compensation to which a distributor is entitled will be recovered from consumers throughout the Province; and**
- **the compensation to which a distributor is entitled in relation to any given eligible investment will be calculated as the distributor’s costs associated with the investment less any amount that the Board determines to represent the direct benefits that accrue to the distributor’s consumers as a result of all or part of the investment.**

5. The September Notice notes that the June Proposed Amendments “proposed to shift responsibility for certain costs associated with the connection of renewable generation facilities from generators to distributors” and “recent legislative developments make it clear that distributors are eligible for compensation or rate protection under section 79.1 of the Act in relation to all renewable generation connection costs that are proposed to be their responsibility under the DSC, provided that they are approved by the Board and subject to the Board’s assessment of any associated local benefits”. The September Notice confirms that the Board’s proposed approach to cost responsibility as set out in the June Proposed Amendments remains appropriate in the context of O. Reg. 330/09, subject only to the proposed revisions.

II. PROPOSED REVISIONS TO THE JUNE PROPOSED AMENDMENTS

i. Definition of “Connection Assets”

6. In the September Notice the Board proposes to provide further clarity by revising the definitions of “expansion” and “renewable enabling improvement” as described below.

7. The Board reminds distributors that it expects distributors to expand or build out their distribution systems to reach connecting customers. As such, the Board states that it expects that distributors will not classify as connection assets, lines designed to reach the customer’s location from the existing main distribution system.

8. The Power Workers’ Union (“PWU”) supports the additional clarity that the Board has provided with respect to the definition of connection assets.

ii. Definition of “Expansion”

9. In the September Notice the Board provides greater clarity and proposes to revise the definition of “expansion” in section 1.2 of the DSC and add a new

section 3.2.30 that provides an expanded list of specific investments or assets that fall within the category of “expansions”. The Board also proposes “to revise the definition of “expansion” to make it clear that an expansion may be triggered by either one or more than one connection request.”

10. The PWU supports the additional clarity that the Board provides with respect to the definition of “expansion” and which specific assets or investments fall within the “expansion” category.

iii. Definition of “Renewable Enabling Improvement”

11. The Board proposes to provide greater clarity by revising section 3.3.2 of the DSC by providing an expanded list of specific investments or assets that fall within the category of “renewable enabling improvements”. The list of investments set out in section 3.3.2 of the DSC includes “the provision of protection against islanding (transfer trip or equivalent)”. The Board confirms that “any assets or equipment located on the customer side of the point of connection do not form part of the main distribution system and are properly classified as connection assets, even if they are assets or equipment identified in section 3.3.2.”

12. The PWU supports the additional clarity that the Board has provided with respect to the definition of “renewable enabling improvement” and what specific assets do or do not fall into this category or are classified as connection assets.

iv. Administration of Rebates

13. The September Notice states that “Section 3.2.27 of the DSC addresses rebates to initial contributor(s) in the event that unforecasted customers connect to assets for which the initial contributor(s) made a capital contribution” and that:

The Board acknowledges that some revisions to the DSC are warranted to clarify how rebates are to be treated in the following circumstances: (a) when a renewable energy

generator connects to the distribution system in respect of an expansion that was initially funded by either a load customer or a generator customer to whom the renewable energy expansion cost cap does not apply (i.e., generation projects that would pre-date the coming into force of the Revised Proposed Amendments); and (b) when a new customer connects to the distribution system in respect of an expansion that was previously funded by a renewable energy generator (i.e., where the cost of the expansion exceeded the initial generator's renewable energy expansion cost cap).

With respect to (a), the Board is proposing that a rebate be paid to the initial contributor(s). The rebate would be paid by the distributor to the initial contributor(s) and the connecting renewable generator's renewable energy expansion cost cap would be reduced by an equivalent amount. ...

With respect to (b), the Board is of the view that there should be no rebate payable to the initial renewable energy generator because, under the proposed approach, the generator would have previously benefitted from the reduction in connection costs provided by the proposed cost responsibility treatment for expansions and renewable enabling improvements.

14. The Board proposes to amend the DSC (new sections 3.2.27A and 3.2.27B) to reflect the above approach.

15. The PWU agrees with the Board's proposed approach regarding the administration of rebates.

v. *Application of the "Renewable Energy Expansion Cost Cap" where Multiple Generators Connect*

16. The Board provides clarification regarding how the "renewable energy expansion cost cap" would be applied and the remaining costs allocated in the event that an expansion was undertaken in response to more than one connection request:

... in such a case, the renewable energy expansion cost cap should be determined based on the aggregate capacity of the generation projects (for example, if three projects of 5 MW each sought to connect, the aggregate capacity would be 15 MW and the available renewable energy expansion

cost cap would be \$1.35 million). Any costs in excess of the cap would be allocated to the connecting renewable generators on a pro rata basis based on the name-plate rated capacity of each of the connecting generation facilities. The Board has proposed to amend the DSC (new sections 3.2.5B and 3.2.5C) accordingly.

17. The PWU agrees with the Board's approach regarding the application of the "renewable energy expansion cost cap" with respect to multiple generation connections.

vi. Enhancement Costs

18. In the June Notice the Board proposed revisions to the definition of "enhancement" to clarify that enhancements do not include renewable enabling improvements. The Board also proposed to create symmetry in the assignment of cost responsibility for renewable enabling improvements and enhancements by having distributors bear the costs of enhancements (section 3.3.3 and section B.1 of Appendix B of the DSC).

19. In the September Notice the Board proposes to revise the June Proposed Amendments (new section 3.3.4 and new paragraph (d.1) in section B.1 of Appendix B of the DSC) to confirm that those proposed amendments do not apply to a distributor until the distributor's rates have been rebased.

20. The PWU agrees with the Board's clarification of enhancement regarding renewable energy improvements and the timing of the effect of the amendments.

21. Given the recent legislative developments the PWU submits that the Board should make it clear that in all circumstances where the distributor has properly incurred costs in all categories related to Feed-in Tariff ("FIT") and microFIT generation that the distributor will be able to fully recover the costs and receive an adequate return on investment for these projects throughout the projected life of these assets whether or not the generation assets remain connected to the distribution system.

22. Further, the PWU submits that the Board should allow for exceptional circumstances where a distributor's rates will be materially and adversely impacted due to the connection of renewable generation projects. The Board should allow for a timely review of such proposals and allow for the proper recovery of costs in a manner that would not be detrimental to the existing distribution customers.

III. ISSUES WHERE NO REVISIONS TO THE JUNE PROPOSED AMENDMENTS ARE PROPOSED

i. Approach to Connection Cost Responsibility

23. In the June Notice the Board described its approach to dealing with cost recovery under section 79.1 of the Act versus cost responsibility. In the September Notice the Board states that the relevant regulation has now been made and as stated in the June Notice, "the Board is aware of the new regulation-making power set out in subsection 88(1)(g)(6.0.1) of the Act, and recognizes that as and when any such regulations are made, the Board may need to revisit the policies proposed in the June Notice and in this Notice. However, the Board is not persuaded that it is necessary or appropriate to defer completion of this initiative for that reason."

24. The PWU submits that should the Board at some future date revisit these policies, the distributors should be assured that any future changes would not detrimentally impact the distributors' cost recovery and allowable returns related to the FIT program.

ii. Determining the "Renewable Energy Expansion Cost Cap"

25. The PWU is of the view that sufficient information has been provided to the Board to alert it to the fact that given the diversity in the size and nature of the distributors in Ontario they are not equally situated and that the changes to the DSC could have significantly different impacts on the distributors. Further, while a

cost cap as proposed by the Board may be administratively convenient, it may have detrimental impacts on some distributors. The Board has indicated in the September Notice that it “may, with the benefit of additional data and further experience regarding expansion costs associated with the connection of renewable generation facilities, revisit the amount of the cap if warranted.” The PWU submits that the Board should allow for an expedited rate review in the event that an individual distributor is adversely affected by the cost cap.

All of which is submitted respectfully.

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