January 15, 2010

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

Dear Ms. Walli:

Re: Rate Protection and Determining Direct Benefits, EB-2009-0349

On December 14, 2009, the Board issued a Board Staff Discussion Paper in the above noted proceeding and sought input from stakeholders. *ENWIN* appreciates the opportunity to contribute some observations in light of the considerable impact this proceeding could have on the industry, particularly if the Board interprets O. Reg. 330/09 as set out Board Staff's paper.

"Setting the Context"
ENWIN shares the sentiment expressed by Board Staff; the anticipated costs of facilitating the connection of distributed renewable generation should be kept in mind during this proceeding and should be considered in the context of an LDC's total expenditures.

It is also important to consider whether the Board's position is that LDCs ought to primarily:

1) Proactively make system investments to encourage projects (i.e. "if you build it, they will come") or
2) Reactively make investments once projects are brought to the attention of the LDC.

The quality of evidence available under a primarily proactive approach will not be as good as under a primarily reactive approach, but it may do more to promote and facilitate distributed renewable generation and expedite connections. The Board's preference to date appears to be proactive according to the Government's mandate. The evidentiary limitations that go along with that forecast-oriented approach should not be lost.

Another important contextual issue is whether upstream costs relate to upstream companies or upstream assets. How funds become available for investment in LDC-owned transformer stations are important and the Regulation links costs to benefits, so the issue should not be forgotten as benefits are considered in this proceeding.

"Rationale for taking Direct Benefits into Account"
The Board Staff paragraph on this topic is difficult to understand. Presumably the rationale for taking direct benefits into account in this proceeding is that the Regulation requires it.

It may be worthwhile for the Board to explicitly draw the link between the concepts of "rate protection" in the Regulation and "cost allocation", which seems to be the parallel regulatory concept. It seems that the costs are being caused by distributed renewable generators and allocated to two groups for recovery:

1) All load customers within the same LDC territory (in an amount equal to the direct benefits enjoyed by this group) and
2) All load customers in the province (for the amount beyond the amount recovered from the first group).

"Identifying the Direct Benefits"
Board Staff has proposed to limit the scope of "direct benefits". However, *ENWIN* perceives that the Regulation itself sets out sufficient limitations in considering direct benefits. Direct benefits:

1) Accrue,
2) Accrue to consumers or classes of consumers,
3) Accrue to consumers or classes of consumers within the LDC that incurred the costs of eligible investments approved by the Board, and
4) Are as a result of all or part of the eligible investment made or planned to be made by the distributor.

The Regulation's requirement that the direct benefits must accrue suggests that there must be sufficient evidence that the direct benefit has come or will come into existence. Understanding the nature of the evidence required by the Board, the forum within which that evidence will be evaluated, the regularity of the evaluation, and by whom the evidence will be led[1] are all important issues both conceptually and in terms of implementation.

The Regulation's requirement that the direct benefits must accrue to consumers or classes of consumers suggests that direct benefits that accrue only to generators[2] are not considered. *ENWIN* expects that there may be costs to maintain current benefits enjoyed by consumers (e.g. protection levels, power quality, service quality). Do these costs directly benefit consumers? Is it reasonable and justified for consumers to pay for greater levels of service or new types of protection that would not have been required but for distributed renewable generation? If consumers do not want the incremental benefit, do the incremental benefits only accrue to the generator? These will be the sorts of issues raised during approval and recovery proceedings.

The Regulation requires that the direct benefits must accrue to consumers or classes of consumers within the LDC that incurred the costs of eligible investments approved by the Board. This suggests that benefits to consumers outside the LDC service area are irrelevant to the calculation of rate protection. *ENWIN* understands that Board Staff has contemplated benefits as they might accrue to other consumers. For example, allocating direct benefits associated with an LDC to the provincial pool of consumers to offset the costs borne by the provincial pool of consumers. This would contradict the Regulation.

The Regulation also suggests that consumers cannot become prescribed consumers until the Board approves an eligible investment and the LDC incurs the costs of an eligible investment. This would seem to put a great deal of importance on the timing of the approval and recovery mechanisms, which have yet to be outlined. It is also not clear whether attaining "prescribed consumer" status happens once or whether it happens each for each eligible investment. This also impacts the timing of approval and recovery proceedings.

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[1] It is not clear that the LDC would be the party with a vested interest in identifying direct benefits; it would appear that the interest in identifying direct benefits belongs to all provincial consumers or possibly all provincial consumers to the exclusion of the consumers of the LDC incurring the costs.
[2] This includes but is not exclusive to distributed renewable generators.

The Regulation requires that the direct benefits be as a result of all or part of the eligible investment made or planned to be made by the distributor. This suggests that there must be a causal link between the investments and the benefits. Benefits that are not a result of eligible investments are not direct benefits.

The Regulation also suggests that calculating direct benefits may be done on a prospective basis, unlike the s. 2 requirement for defining prescribed consumers whereby the LDC must have already incurred Board-approved costs for a consumer to fall in that category. An interpretation from the Board on the reconciliation of these differing frames of reference may be important to developing approval and recovery mechanisms.

ENWIN suggests that, based on the above, the Regulation establishes much more stringent limitations on the scope of direct benefits than what is set out in the Board Staff paper. Further, these are sufficient limitations and should not be added upon or modified by the Board.

"Network Transmission and WMSC Charges"

ENWIN understands Board Staff's paper to mean that over time and all things being equal, an LDC with generation in its service territory will develop an incremental variance in its accounts for RSVA – Network Transmission Charge (1584) and RSVA – Wholesale Market Service Charge (1580). This variance would arise because the LDC's consumers would pay certain charges, but the LDC would be required to pay the IESO lesser amounts since some load would be displaced by generation within the LDC service territory. *ENWIN* does not dispute this assessment.

However, incremental changes to balances in accounts 1584 and 1580 are not direct benefits and therefore should not be considered in this proceeding. Among the reasons why these are not direct benefits is the lack of causality between the incremental variance account balances and the eligible investments made by the LDC. The variances are driven by (among other factors) the take-up of distributed renewable generation, not the LDC's eligible investments. An LDC could make no eligible investments, yet still have take-up and thus develop an incremental variance. Conversely, and LDC could make significant eligible investments, yet not have any take-up and thus not develop any incremental variance. Without a causal link, these cannot be direct benefits.

Moreover, it seems that there is already an established procedure for disposing of RSVA balances. Those balances are credited to or recovered from consumers through rate riders. As with any RSVA account, the consumer is ultimately "trued-up" for any variance during disposition to clear balances for these pass-through charges. These benefits and detriments are not caused by LDC eligible investments.

Finally, as alluded to above, the Board Staff paper states that "provincial ratepayers should share in that benefit" (p. 7). This is contrary to the Regulation, which limits direct benefits to those that accrue to prescribed consumers, namely consumers within the LDC. The Regulation contemplates allocating costs from generators to either LDC consumers or all provincial consumers; it does not contemplate allocating direct benefits from LDC consumers to all provincial consumers. If it did, the equation would be A = B – C + D, where D are the direct benefits that accrue to all provincial consumers.

“Improved Capability of Distribution System for Load Customers”
ENWIN appreciates the challenge of developing policy on this topic. *ENWIN* anticipates that the challenges of implementation will be just as great. Accordingly, it is important that the:

1) Correlation with the Regulation is precise,
2) Concepts and processes are consistent with other regulatory and operational concepts and processes,
3) Burden not outweigh the benefit,
4) Choice is simplicity and flexibility over complexity and rigidity where possible, and
5) Roles of the Board and stakeholders are clear.

Board Staff’s phrase, “the benefit is readily quantified in monetary terms” does not appear in the Regulation. The phrase is vague and is not a necessary limitation on the Regulation’s wording. Further, it adds burden and complexity. The path is clearer without the phrase.

The Regulation is less a departure from current practice than it might appear on its face. The Regulation contemplates benefits in the same way that the benefits are currently considered in rate proceedings. Namely, the Board asks itself “Does the expenditure have a value lesser than or equal to the resulting benefit?” In answering that question, the Board now considers not only the benefits to the LDC’s consumers but the benefit of promoting renewable generation. If the answer is “No”, the cost is not recoverable from any ratepayer. If the answer is “Yes, the cost is justified by the benefit”, the Board proceeds to a new second question.

The new second question after the traditional “recoverability question”, is “Does the expenditure directly benefit consumers in this LDC?” If the answer is “Yes”, then the cost is allocated to the LDC consumers through distribution rates. If the answer is “No”, then the cost is allocated to all provincial consumers. If the answer is “Partially”, then the cost is allocated among LDC consumers and provincial consumers according to the Board’s judgment based on the evidence and arguments before it.

ENWIN expects that, as with everything, the Board’s expectations for the evidence will increase as stakeholders gain experience and commensurate with the value of the proposed expenditure. The Board Staff proposed principles and criteria are of interest from a discussion perspective, but *ENWIN* encourages the Board to not impose real or perceived limitations on what principles or criteria any stakeholder might advance, especially not in the infancy of this process. As with LDCs going through the cost of service proceedings, stakeholders of all types will increasingly become better educated regarding the evidentiary expectations that the Board has for expenditures. The evidence needed to support arguments for these new cost allocations may differ from traditional evidence, but it need not involve quantifying evidence that doesn’t lend itself to quantification or dismissing other evidence as “not readily quantifiable”.

The Board’s role seems to require both art and science. In the case of the cost allocations discussed above, the Board’s early decisions may be a little heavier on “art”. *ENWIN* respectfully submits that this is not only acceptable, but appropriate in the context of new statutory responsibilities and processes. The Board can help stakeholders improve the evidence that comes before it through its traditional approaches: publishing filing guidelines and providing detailed reasons for its decisions.

Next Steps
ENWIN's proposal shifts the focus away from revising RSVA disposition policy and finding ways to monetize qualitative benefits. It puts the focus on integrating the Regulation with existing regulatory principles and processes. A side benefit of the approach that *ENWIN* proposes is that there will be more time to work through very important implementation issues.

It will be necessary to bridge the gap between the Regulation's requirement of annual filings and the present rules for Distribution System Plans, which *ENWIN* understands are to be filed every four years within cost of service applications. There are other procedural matters, such as how project approval and recovery will operate, including in IRM years (e.g. modified incremental capital module).

The best next step from *ENWIN*'s perspective would be for Board Staff to reconsider the Regulation in light of these comments and those received from other stakeholders. *ENWIN* hopes that Board Staff will adopt recommendations that are not only more correct, but that simplify things at this conceptual stage, keeping in mind that the process issues will be exponentially compounded as the complexity and novelty of the concepts increase.

Once the concepts are settled, *ENWIN* would welcome the opportunity assist in the development approval and recovery processes and filing guidelines. *ENWIN* suggests a stakeholder gathering. This might provide insight into the evidence that is available or might become available and the best means of bringing that information to the Board for consideration. *ENWIN* would expect that the Board and its Staff, other LDCs, the IESO, the OPA, consumer groups, and generator groups will all have important information and thoughts in this regard.

Yours very truly,

***ENWIN* Utilities Ltd.**

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