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BY EMAIL and PERSONAL DELIVERY

February 2, 2010
Our File No. 2091007

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2009-0397 – GEA Plan Filing Requirements

We are counsel for the School Energy Coalition in this proceeding. On December 18, 2009 the Board sent a letter to stakeholders seeking input into Draft Filing Requirements relating to Distribution System Plans under the Green Energy Act (the "Proposal"). These are the submissions of the School Energy Coalition.

General

The GEA represents a sea change in distribution system planning in Ontario, and results in distributors taking on new and more complex responsibilities. The end goal is a reconfigured Ontario grid that welcomes rather than restricts the expansion of distributed generation, particularly renewables, and maximizes the benefits available from smart grid technologies. The GEA gives the initial responsibility for this change to the distributors, under the supervision and regulatory control of the Board. Key to that responsibility is the requirement in section 70(2.1) of the OEB Act that distributors develop formal system development plans directed at achieving these goals.

The Proposal appears to us to be an excellent first step in this process, providing an initial framework for those plans, and making the crucial distinction between Basic Plans and Detailed Plans.

Of importance in the Proposal is the high-level approach taken. Filing requirements are sometimes very specific, with lists of documents to be included in the filing, etc. This Proposal appears to start from the premise that general guidance is what is needed at this point, with the understanding that GEA Plans will evolve over the next few years as the industry, and the Board, gain experience with them and learn what works and what doesn't. We agree with that approach. As a result, our comments below focus on general issues, and do not attempt to be overly specific in what should be included in these plans at this early stage.

Specific Comments

Against that background, we have only eight specific comments concerning the Proposal:

1. **Common Plans.** The Proposal assumes that each plan will be from a single distributor. We recognize that this is likely to be the case for most plans, but in our view the filing requirements should contemplate the possibility that groups of distributors will work together to develop common or related plans, sharing resources and thinking beyond the boundaries of their individual franchise areas. While it is clear that much of what has to be done in any GEA plan will be specific to the configuration of the individual system, and the geographic and other realities faced by that distributor, there will be many common elements. Some distributors have already banded together to find common solutions to common issues (CIS, for example), and we believe that the Board should encourage distributors to do so in GEA planning as well. Further, it is possible to identify some areas of the province – the Niagara peninsula, perhaps – where a common reconfiguration plan across franchise boundaries might be preferable to plans that are more insular. Therefore, we think the Proposal would benefit from expressly acknowledging that groups of distributors can file common plans if they feel that would be more efficient and more effective.
2. **Requirement for Detailed Plan.** On page 6 of the Proposal, the Board suggests that in certain circumstances a Detailed Plan will be required where a distributor is planning a certain level of spending in this area. Including this in filing requirements is useful, but we wonder if this should not be included as a licence condition or made a DSC requirement. In general, Board policies are followed by most distributors, but each distributor can treat themselves as an exception if they feel that is justified. In the case of GEA plans, we believe that utilities should be required – in a legal sense – to formalize their system development spending if their spending is going to be material.

3. **Basic/Detailed Thresholds.** The Board proposes that distributors “graduate” from a Basic Plan to a Detailed Plan if their spending passes certain thresholds. In each case, the structure of the threshold is a percentage (one for single year spending, one for five year planned spending) of rate base, with a top and bottom limit. For one year spending, the percentage is 3% of rate base, if rate base is between \$3.3 million and \$333 million, with a bottom of \$100,000 and top of \$10 million spending. It appears to us there are eight distributors below the low end of that scale, and six above the top end. For five year spending, the percentage is 6% of rate base, if rate base is between \$1.7 million and \$333 million, with a bottom of \$100,000 and top of \$20 million spending. We suggest the following two adjustments to those thresholds:
 - a. The bottom level produces two different groups of distributors. We agree that the smallest eight should have a fixed limit, and therefore think that a five year plan with \$200,000 or more of spending should be used. This would mean that the bottom figure would apply to the same distributors.
 - b. The figures at the top end are significantly higher than we would have expected. A utility like Veridian, for example, would be permitted to spend up to \$5 million per year in this area without having a Detailed Plan in place. For a smaller utility, like Whitby, they could spend about \$2 million per year without a Detailed Plan. In our view, a utility spending this kind of money reconfiguring its system for GEA purposes should not do so without having first established a thoughtful and thorough plan within which to carry out the work. From an operational point of view, this is just good management of the system. From a regulatory point of view, it is a necessary point of control and visibility for the regulator. We therefore suggest that the \$10 million annual figure be reduced to \$1.5 million, and the \$20 million five year figure be reduced to \$4 million. Our estimate is that this will mean the twenty largest distributors will be required to have Detailed Plans if they are engaging in any significant system reconfiguration and/or enhancement activities.
4. **Filing of First Plan.** The Proposal requires utilities to file GEA Plans with their cost of service applications, starting with the 2011 rate year applications. We agree that the best time for the Board to review a GEA Plan is in the context of a rate case. We are concerned, however, that some utilities who are rebasing in 2010 will not be filing their GEA Plans until 2014, their next rebasing. For some of them, that is likely too late. On the other hand, requiring a utility to file a plan just for the sake of having one soon seems wasteful if the particular utility does not need to carry out significant work on their system. Our proposal in this respect is that the Board’s proposed requirement to file with the next rebasing be the base rule, but that a distributor is required in any case to file a Detailed Plan before reaching the threshold spending levels for such plans. For example, if a utility’s threshold is \$1 million, and they intend to spend \$2 million in 2011, then even if their next rebasing is

scheduled for 2013, they should be required to file their Detailed Plan before the point in 2011 at which they pass \$1 million. This would likely only apply to a few distributors, but for those it would be important for the Board to see what they are planning before they get too far along the implementation road.

5. **“System Benefits”**. On page 8 of the Proposal, distributors are required to provide “a qualitative analysis of the system benefits” of their projects and activities. In light of the potential for confusion with this term – and particularly given the “direct benefits” concept also in play – we believe that some expanded guidance on what this means would be useful. Between local direct benefits, and the overall societal benefits that are inherent in the GEA itself, there is a full continuum of levels of analysis. Identifying more precisely what should be analyzed would in our view be of assistance to distributors.
6. **Alternative Cost Recovery Mechanisms**. On page 13 of the Proposal, the door is left open for distributors to propose “suitable mechanisms” for cost recovery during their IRM years. This, presumably, extends beyond the incremental capital module already built into 3rd Generation IRM. In our view, leaving this completely open-ended creates the potential for applications that either go far beyond what would be reasonable for the Board to consider, or re-hash the debates already resolved in the 3rd Generation process. We realize that there may be unusual circumstances in which the existing tools will not be sufficient to deal with a distributor’s GEA plan. However, we believe that the Board should provide, in these filing requirements, fuller guidance as to what “suitable mechanisms” might be acceptable, or what factors will be taken into account, and criteria applied, in considering new cost recovery proposals.
7. **Nature of Approval**. The Proposal, on page 16, discusses the nature of the approvals that the Board will grant when it is asked to review a Detailed Plan. In principle, we believe that providing the utility with certainty and predictability is important, not only allowing them to proceed with confidence, but also keeping costs down in the long term. The key, though, is the level of detail provided in the Detailed Plan. We are concerned that, as currently worded, this section of the Proposal appears to “promise” distributors that, if they file a Detailed Plan, they are essentially done with prudence for the projects within the plan. There are circumstances in which this would be appropriate, but we can see others in which that would be going much too far. What we suggest is that this section be reworded to make clearer that there is a level of thoroughness in a Detailed Plan that can result in a “bulletproof” approval, but that just filing a Detailed Plan does not produce that result unless the level of evidence in support justifies it. (We realize that the Proposal already says this. Our concern is that, without blunter language, an expectation may inadvertently be raised.)
8. **Content of Plan**. The Proposal makes clear in a number of places that these plans are about system expansion, reinforcement, and smart grid. The subject matter is the “common

carrier” component of what distributors do. It does not include CDM, distributor-initiated renewable generation, etc. Despite this, and despite the clear wording of section 70(2.1), we know that a number of distributors are developing GEA Plans that include – in some cases even focus on – CDM and distributor renewables projects. Our suggestion is that the Board make explicit that Basic Plans and Detailed Plans covered by these filing requirements should not include CDM or renewable generation initiatives, but should be limited to the system itself. While this may seem like boots and braces, without this we believe that many GEA Plans will in fact include or focus on these components, an unnecessary complication and diversion from the primary goal of the plan.

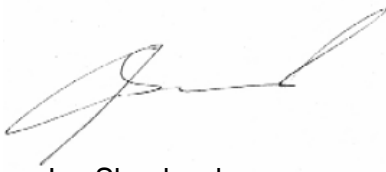
Aside from the comments above, we believe that the Proposal constitutes a good framework within which distributors can start developing plans, and the Board can as it reviews them refine and enhance its filing requirements for future plans.

Conclusion

School Energy Coalition submits that it has engaged in a focused intervention with a view to being efficient and assisting the Board. We therefore request that the Board order payment of our reasonably incurred costs.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P.C.



Jay Shepherd

cc: Bob Williams, SEC (email)
Wayne McNally, SEC (email)
Interested Parties (email)