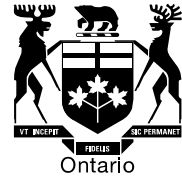


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NOTICE OF REVISED PROPOSAL TO AMEND A CODE

REVISED PROPOSED AMENDMENTS TO THE DISTRIBUTION SYSTEM CODE

BOARD FILE NO: EB-2009-0077

**To: All Licensed Electricity Distributors
All Licensed Generators
All Participants in Consultation Process EB-2009-0077**

Date: March 11, 2010

The Ontario Energy Board (the "Board") is giving notice under section 70.2 of the *Ontario Energy Board Act, 1998* (the "Act") of revised proposed amendments to the Distribution System Code (the "DSC").

I. Background

On October 21, 2009, the Board issued a Notice of Amendment to a Code (the "October Notice") setting out amendments to the DSC that revised the Board's 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 "October Amendments").

As part of the notice and comment process associated with the development of the October Amendments, the Board issued proposed amendments to the DSC regarding the application and administration of rebates under the Board's then-proposed revised approach to cost responsibility. Specifically, in proposed amendments to the DSC issued on September 11, 2009 (the "September Proposed Amendments"), the Board proposed that no rebate be payable to a renewable generator whose connection costs

were determined on the basis of the proposed new cost responsibility rules (i.e., whose expansion costs were determined based on the application of a renewable energy expansion cost cap). In response, some stakeholders recommended that the Board reconsider that proposal. One of these stakeholders noted that the Board's proposed approach could result in some generators delaying their connections in order to connect to expansions already paid for by earlier connecting renewable generators.

In the October Notice, the Board indicated that it believed that the rebate issue warranted further examination, including in relation to the following questions: (1) whether a rebate should be payable by an unforecasted customer that connects to an expansion that was initially constructed for a renewable generator to whom a renewable energy expansion cost cap applied; and (2) whether the rebate should avail to the benefit of the ratepayers that ultimately bore some or all of the costs of the initial expansion. The Board also advised in the October Notice that it would defer consideration of the proposed amendments regarding rebates and address the issue through a separate notice and comment process.

The Board is now proposing amendments to the DSC to address the issue of the application of rebates under the Board's new cost responsibility rules, as discussed in section II below (the "Proposed Rebate Amendments"). The Proposed Rebate Amendments to the DSC are set out in Attachment A to this Notice.

II. Proposed Rebate Amendments to the DSC

The Board has further examined the rebate issue and is persuaded that it should revise its approach relative to the approach set out in the September Proposed Amendments. The Board is of the view that an unforecasted customer that connects to a distribution system and benefits from an earlier expansion made to connect a renewable generation facility should contribute its share towards the cost of that expansion. The Board is therefore now proposing that a rebate be paid to renewable generators whose connection costs are determined on the basis of the new cost responsibility rules ("new renewable generators") when an unforecasted customer connects to an expansion that was initially triggered by the new renewable generator's connection. Depending on the nature of the unforecasted customer (load, renewable generator, non-renewable generator), the distributor may either be required to fund a portion of the rebate or may be entitled to some or all of the benefit of the rebate.

The Board believes that this approach will eliminate incentives that may have existed under the approach reflected in the September Proposed Amendments for customers to delay connections in order to avoid contributing to the cost of an expansion. Further, the Board notes that this approach will avoid situations where local and Provincial ratepayers, having contributed to the initial new renewable generator's expansion costs, would potentially be funding part of the connection costs of unforecasted load customers and non-renewable generators.

The Board is therefore proposing to amend the DSC to as follows:

i. Where Unforecasted Customer is also a New Renewable Generator

Where the unforecasted customer is also a new renewable generator (the "unforecasted generator") and the initial new renewable generator (the "initial generator") made a capital contribution (i.e., where the costs of the expansion exceeded the initial generator's expansion cost cap), the unforecasted generator would contribute its share towards the cost of the expansion and the initial generator would be entitled to a rebate. The distributor and, when applicable, the unforecasted generator would each contribute towards the rebate.

The rebate would be determined on the basis of how the costs of the initial expansion would have been apportioned between the initial generator, the unforecasted generator and the distributor had the two renewable generators connected to the distribution system at the same time, as set out in sections 3.2.5B(b) and 3.2.5C of the DSC. Specifically, the rebate payable to the initial renewable generator would be the difference between the capital contribution made by the initial renewable generator towards the cost of the earlier expansion and the contribution it would have made had it and the unforecasted generator connected at the same time.

Although the entire amount of the rebate would be paid by the distributor to the initial generator, some portion of the rebate would be attributable to the unforecasted generator. That portion would be the amount that the unforecasted generator would have paid as a capital contribution towards the cost of the earlier expansion had it connected at the same time as the initial generator. To give effect to this approach, the distributor would reduce the unforecasted generator's renewable energy expansion cost cap by the amount of the rebate. Where that

amount exceeds the unforecasted generator's renewable energy expansion cost cap, the distributor would collect the difference from the unforecasted generator.

Where, however, the initial generator did not make a capital contribution, no rebate would be payable because the initial generator did not bear any costs.

The above approach is reflected in the proposed amendments to the DSC set out in Attachment A (sections 3.2.27B, 3.2.27C and 3.2.27F(b)).

ii. Where Unforecasted Customer is a Load or a Non-Renewable Generator

Where the unforecasted customer is a load customer or a non-renewable generator, the unforecasted customer would also contribute its share, in this case determined in accordance with section 3.2.27 of the DSC. The rebate would be apportioned between the initial generator and the distributor based on the share of the cost of the initial expansion borne by each of them. Where the initial generator made a capital contribution (i.e., where the costs of the expansion exceeded the initial generator's expansion cost cap), the initial generator and the distributor would share the rebate on a pro-rata basis in proportion to their respective contributions to the cost of the initial expansion. Where the initial generator did not make a capital contribution, the rebate would avail to the benefit of the distributor.

The above approach is reflected in the proposed amendments to the DSC set out in Attachment A (sections 3.2.27D, 3.2.27E and 3.2.27F(b)).

The Board confirms that its proposed approach to rebates as set out above applies only where a capital contribution was potentially required for the construction of the initial expansion, and does not apply in relation to an initial expansion that was in a Board-approved distribution system plan filed with the Board. The Board is proposing to amend the DSC accordingly (section 3.2.27F(a)).

The Board anticipates that the instances where a renewable generator connection results in a rebate payable from a subsequently connecting customer will decrease over time as distribution system plans are approved. This reflects the Board's expectation that distribution system plans will identify investments that need to be made in reasonable anticipation of the connection of renewable energy generation facilities,

such as building sufficient capacity to accommodate multiple foreseen generation projects. The Board also expects that generators will site and time their projects in a manner that takes advantage of capacity that is available or is planned to be available, such that their specific connections will minimize the need for additional expansion investments that could, if the cost exceeds the generator's renewable energy expansion cost cap, place the generator in a position where it would be entitled to a rebate.

The Board recognizes 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 their responsibility under the DSC, provided that the costs are approved by the Board and subject to the Board's assessment of any associated local benefits. The compensation to which a distributor is entitled will be recovered from consumers throughout the Province. As a result, under the Proposed Rebate Amendments, there could be cases where a distributor obtains a rebate from an unforecasted customer after having already received compensation for the associated connection costs from consumers throughout the Province. Where the unforecasted customer is a non-renewable generator, for example, there is potential for the distributor to be compensated twice for the same cost. The Board expects to address this issue as part of its consultation on Rate Protection and the Determination of Direct Benefits under Ontario Regulation 330/09 (EB-2009-0349).

III. Anticipated Costs and Benefits

The Board believes that the Proposed Rebate Amendments will facilitate the achievement of the Government's policy goals regarding the connection of renewable generation by removing a potential incentive for renewable generators to delay their connections, and by ensuring that subsequent customers contribute their share of the costs of an earlier expansion. The Proposed Rebate Amendments will also protect the interests of consumers by reducing the potential for ratepayers to fund the connection costs of load customers and non-renewable generators.

IV. Coming Into Force

The Board is proposing that the Proposed Rebate Amendments to the DSC as set out in Attachment A to this Notice come into force on the date on which they are published on the Board's website after having been made by the Board.

As discussed in the October Notice, however, the Proposed Rebate Amendments would by their terms apply to any expansions made on or after October 21, 2009, being the date on which the Board's cost connection amendments to the DSC came into force. This is reflected in the Proposed Rebate Amendments to the DSC (sections 3.2.27B and 3.2.27D).

V. Invitation to Comment on Proposed Amendments and Cost Awards

All interested parties are invited to comment in writing on the Proposed Rebate Amendments to the DSC set out in Attachment A by **March 26, 2010**. Two (2) paper copies of each filing must be provided, and should be sent to:

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

The Board requests that interested parties make every effort to provide electronic copies of their filings in searchable/unrestricted Adobe Acrobat (PDF) format, and to submit their filings through the Board's web portal at www.errr.oeb.gov.on.ca. A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at www.oeb.gov.on.ca, and fill out a user ID password request. Additionally, interested parties are requested to follow the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the "e-filing services" webpage. If the Board's web portal is not available, electronic copies of filings may be filed by e-mail at boardsec@oeb.gov.on.ca.

Those that do not have internet access should provide a CD or diskette containing their filing in PDF format.

Filings to the Board must be received by the Board Secretary by **4:45 p.m.** on the required date. They must quote file number **EB-2009-0077** and include your name, address, telephone number and, where available, your e-mail address and fax number.

Cost awards will be available under section 30 of the Act to eligible persons in relation to the provision of comments on the Proposed Rebate Amendments set out in Attachment A, **to a maximum of 5 hours**.

This Notice, including the Proposed Rebate Amendments to the DSC set out in Attachment A, will be available for public inspection on the Board's website at www.oeb.gov.on.ca and at the office of the Board during normal business hours.

Any questions relating to the Proposed Rebate Amendments to the DSC set out in Attachment A should be directed to Roy Hrab at 416-440-7745 or by e-mail to: roy.hrab@oeb.gov.on.ca. The Board's toll free number is 1-888-632-6273.

DATED at Toronto, March 11, 2010

ONTARIO ENERGY BOARD

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

Attach: Attachment A: Revised Proposed Amendments to the Distribution System Code

Attachment A

Revised Proposed Amendments to the Distribution System Code

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

1. The definition of “renewable energy expansion cost cap” in section 1.2 of the Distribution System Code is amended by adding the following immediately after the words “section 3.2.27A”:

or section 3.2.27B

2. Section 3.2 of the Distribution System Code is amended by adding the following immediately after section 3.2.27A:

3.2.27B Notwithstanding section 3.2.27, when an unforecasted customer that is a renewable energy generation facility to which section 3.2.5A or 3.2.5B applies (the “unforecasted renewable generator”) benefits from an earlier expansion made on or after October 21, 2009 to connect another renewable energy generation facility to which section 3.2.5A or 3.2.5B applies (the “initial renewable generator”), the initial renewable generator shall be entitled to a rebate if the cost of the earlier expansion exceeded the initial renewable generator’s renewable energy expansion cost cap. In such a case, the following rules shall apply:

- (a) the distributor shall pay to the initial renewable generator a rebate in an amount determined in accordance with section 3.2.27C;*
- (b) the distributor shall reduce the unforecasted renewable generator’s renewable energy expansion cost cap by the amount of the rebate; and*
- (c) if the amount of the rebate exceeds the unforecasted renewable generator’s renewable energy expansion cost cap, the distributor shall also collect that difference from the unforecasted renewable generator.*

For greater certainty, no rebate shall be payable to an initial renewable generator towards the cost of an earlier expansion if the cost of the earlier expansion did not exceed the initial renewable generator’s energy expansion cost cap.

3.2.27C For the purposes of section 3.2.27B, the amount of the rebate payable by the distributor to the initial renewable generator shall be the difference between the amount paid by the initial renewable generator towards the cost of the earlier expansion and the amount that would have been paid by the initial renewable generator towards that cost, determined in accordance with the rules set out in sections 3.2.5B and 3.2.5C, had the earlier expansion been undertaken for both the initial renewable generator and the unforecasted renewable generator.

3.2.27D Notwithstanding section 3.2.27, an unforecasted customer that is a load customer or a generation customer to which neither section 3.2.5A or 3.2.5B applies and that benefits from an earlier expansion made on or after October 21, 2009 to connect a renewable generation facility to which section 3.2.5A or 3.2.5B applies (the “initial renewable generator”) shall contribute towards the cost of the earlier expansion. In such a case, the following rules shall apply:

- (a) where the cost of the earlier expansion exceeded the initial renewable generator’s renewable energy expansion cost cap, the initial renewable generator and the distributor shall be entitled to a rebate in an amount determined in accordance with sections 3.2.27 and 3.2.27E; or*
- (b) where the cost of the earlier expansion was at or below the initial renewable generator’s renewable energy expansion cost cap, the distributor shall be entitled to a rebate in an amount determined in accordance with section 3.2.27.*

3.2.27E For the purposes of section 3.2.27D(a), the amount of the rebate shall be apportioned between the initial renewable generator and the distributor on a pro-rata basis based on their respective contributions to the cost of the earlier expansion.

3.2.27F For greater certainty:

- (a) sections 3.2.27B and 3.2.27D do not apply in respect of an expansion referred to in section 3.2.5A(a) or 3.2.5B(a);*
- (b) the amount of the rebate payable to an initial renewable generator under section 3.2.27B or section 3.2.27D(a) shall not exceed the amount paid by the initial renewable generator as a capital contribution towards the cost of the earlier expansion; and*
- (c) where an earlier expansion referred to in section 3.2.27B or 3.2.27D was made to connect more than one renewable energy*

generation facility to which section 3.2.5B applies, the amount of the rebate payable to the renewable generators shall be apportioned between them on a pro-rata basis based on the total name-plate rated capacity of each renewable energy generation facility referred to in section 6.2.9(a) (in MW).