

May 25, 2010

Ms. Kristen Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON - M4P 1E4

*Via RESS and by courier*

Dear Board Secretary:

**Re: Connection of micro-embedded generation and 3rd parties**

The Electricity Distributors Association (EDA) is the voice of Ontario's local distribution companies (LDCs). The EDA represents the interests of over 80 publicly and privately owned LDCs in Ontario.

We are writing to you regarding an issue of serious concern to the EDA membership; regarding an LDC's ability to mitigate risks related to connection of micro-embedded generation.

We note that in the context of the OEB's consultation in 2003 on the proposed Distribution System Code amendments (RP-2003-0113 - Minister's Directive on Connection of New Generation to Local Distribution Systems) to facilitate the connection of new generation to local distribution networks, the issue of the respective liabilities of the parties and how they would be dealt with in the form of standard agreement was raised. In the Board's December 22, 2003 report on the issue, the Board stated as follows:

**Liabilities**

Some generators were concerned that the new section 6.2.26 may hold them liable for actions caused by others. They would prefer that the general liability section 2.2.1 would govern all circumstances. The Board notes that section 6.2.26 is very similar to the previous section 6.2.6. However, the Board has decided that the second sentence of section 6.2.26 ("Despite section 2.2.1, if damage to the distribution system or increased operating costs result from the connection of a generation facility other than a micro-embedded load displacement generation facility, the distributor shall be reimbursed for these costs by the generator") should not apply to micro-embedded load displacement facilities. The Board expects liability-related issues will be further addressed as part of the future contract standardization initiative.

The Board, however, did not conduct a specific review of the liability issue after 2003.

We note that neither the Board's report nor the amendments to the DSC implied in any way that the LDCs are expected to assume the liability associated with the potential damage resulting from the connection of a micro-embedded generation facility, especially those caused as a result of third parties being affected adversely by the actions or inactions of such facility.

This is consistent with the treatment under the DSC of liabilities associated with potential damage/damage to third parties resulting from the connection of small to mid-sized generation facilities. The form prescribed by the DSC for these generators does indeed provide for mechanism to mitigate the risks for LDCs in that the generator is required to carry commercial general liability insurance, as follows:

**9. Insurance**

9.1 Throughout the term of this Agreement, the Customer shall carry commercial general liability insurance for third party bodily injury, personal injury, and property damage in an amount as follows:

*[Parties to check the applicable box below]*

- if the Facility is a Small Embedded Generation Facility (see section 2.1)  
not less than \$1,000,000 per occurrence and in the annual aggregate
- if the Facility is a Mid-sized Embedded Generation Facility (see section 2.1)  
not less than \$2,000,000 per occurrence and in the annual aggregate

Prior to execution of this Agreement, the Customer shall provide the Distributor with a valid certificate of insurance. The Customer shall provide the Distributor with prompt notice of any cancellation of the Customer's insurance by the insurer.

We note that the DSC as yet does not provide for a similar mechanism to mitigate the risks associated with 3<sup>rd</sup> parties in the case of micro-embedded generation. In order to provide clarity on the means through which LDCs will be protected from these risks posed by micro-embedded generation, the EDA urges the OEB to proceed with your commitment to review the liability issue. To this end, we would appreciate hearing from the Board on its intent and schedule to address this outstanding matter.

Yours truly,



Guru Kalyanraman  
Director, Conservation and Energy Management