

111 Horton Street
P.O. Box 2700
London, Ont.
N6A 4H6



April 19, 2013

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

Re: Comment Letter - Proposed Amendments to the Distribution System Code (EB-2012-0246)

Dear Ms. Walli:

With respect to the Notice of Proposal to Amend a Code (Proposed Amendments to the Distribution System Code – Board File EB-2012-0246, issued on March 28, 2013), London Hydro would like to comment to the Board’s Proposal and our concerns, in particular to the Standard Form Agreement (Appendix E of the Distribution Systems Code).

The present Standard Form Agreement, it does not permit a distributor to include important wording modifications or include conditions that allows an electricity distributor to mitigate one of its concerning risks. The risk is associated with third-party liability claims, resulting from micro-embedded generation facilities’ equipment malfunctions or other possible actions by the micro-embedded generator resulting in third party damaged and claims. This restriction in the Agreement, in which the distributor is not able to sufficiently provide tools to reduce its risks and exposures, I would suggest are not appropriate in any corporate or business environment. A company and its stakeholders should always attempt to identify its risks and incorporate the appropriate risk mitigations into their organization. The lack of a distributor to be able to request a micro-embedded generator to provide proof of insurance and/ or an insurance certificate goes against acceptable business practices, namely for entities to incorporate appropriate risk mitigations.

To further, the General Commercial Liability Insurance Company providing coverage’s for most distributors has already notified distributors the risks and exposures as to micro-embedded generator operations. They have advised distributions

Our Commitment is To Our Customers

that they should be requesting certificate of insurances for micro-embedded generators. I suggest if the major general commercial liability insurance provider for distributors has expressed concerned associated with the liability exposures as to micro-embedded generator operations, that distributors should be permitted to have contained in the Standard Form Agreement (Appendix E of the Distribution Systems Code) to request proof of insurance and/ or an insurance certificate.

The joint and several liability risks to the stakeholders of the distributor are real. Distributors have realized that on occasion micro-embedded facilities have utilized sub-standard equipment. This sub-standard equipment at a facility is directly connected to the distribution system and could potentially result in severe impacts to the distribution system, in which third parties could suffer damages. Consideration should be made that this same sub-standard equipment will normally deteriorate as time goes on during the twenty year term of the microfit agreement, having greater increase risk of failure and possible impact to the distribution system. London Hydro had one situation in which a new home owner brought a property with a micro-embedded generation facility. The new owner was not informed as to the particulars of the OPA micro-embedded generator contract or how to properly operate the system. It would be unfortunate if the new home owner or others that improperly operate the microfit system cause death or injury, property damage, or be served with legal action.

My last comment is one that I believe to be very important to all stakeholders. If an incident does occur and caused by the micro-embedded generator, resulting in damages, the settlement and legal costs could be considerable. If the effected party was a multi-unit apartment building the damages settlement could be well over 30 to 40 million dollars. The micro-embedded generator would usually have a home owner's policy with liability limits of \$1 million. The micro-embedded generator would be responsible for the remaining settlement payment. But as usually experienced in Ontario the apartment building owner or his/ her insurance company would seek recovery from the distribution company by naming it in the claim. The distribution company and its stakeholders could be responsible to paying millions of dollars in a third party lawsuit (keeping in mind that distributor's insurance company might also reject accepting the claim on the basis a third party incident not normally contained as a coverage's in the policy). Although the distributor and its stakeholders could be severely impacted in providing settlement to the third party, it is agreed that there might be at least some recoveries by the micro-embedded generator's insurance company (assuming they have such insurance coverage's). If the damages and legal costs are under the limit of the micro-embedded generator insurance policy at least the stakeholders of the distributor, especially its Customers, are not facing potential costs of settling the damages and legal costs.

Just to add one other consideration as to this matter, when a micro-embedded generator contacts me they often ask questions associated to their requirements contained in the OPA Contract and/ or the distribution connection agreement (Appendix E). In our conversation I usually advise the new micro-embedded generator to be aware they should associate their operation as being a business. That they should consult with their tax consultants, lawyers, and insurance companies / brokers. Many do not understand that there could be tax implications as to their micro-embedded generation

operation, as well as they should understand there could be limitations in their existing insurance policies that discount coverage's of the micro-embedded generator facility. By consulting with their insurance company / broker they can confirm they have appropriate insurance coverage of micro-embedded generator facility. If the distribution connection agreement (Appendix E) included wording in which a micro-embedded generator should provide insurance proof and/ or insurance certificate to the distributor, this facilitates the micro-embedded generator to consult with his or her insurance company/ broker. In this way, the micro-embedded generator at the same time can obtain confirmation of their coverage's associated with the micro-embedded generation facility. The generator has confirmed insurance protection reducing the risk of losing their property and assets, and facing bankruptcy, due to the unfortunate third party damages that were a result of incidences from their micro-embedded generator operation.

Please, if you have any question or comment as to this letter; do not hesitate to contact me.

Regards,

Mike Chase, CMA, MBA

Director of Finance and Regulatory

London Hydro Inc.