

ONTARIO ENERGY BOARD

FRAMEWORK FOR ENERGY INNOVATION (FEI)

Comments on Report of the FEI Working Group

of

Association of Major Power Consumers in Ontario (AMPCO)
and
Industrial Gas Users Association (IGUA)

General Perspective

1. In this matter, at this time, scope if important.
2. We believe that the OEB sought to progress what had been a useful but wide ranging consultation on *Utility Remuneration*¹ and *Responding to Distributed Energy Resources*² through a FEI Working Group (FEIWG) mandate that was purposefully focussed on near term, priority, incremental regulatory actions.
3. In its March 23, 2021 letter to interested parties announcing the FEIWG, the OEB stated:

The OEB notes there is general agreement among stakeholders that now is an opportune time to undertake policy work that anticipates and supports continued evolution of innovation in the sector. To that end, the OEB has developed two workstreams that involve a number of tasks intended to address priority issues in the near term. The objective of this approach is to respond to the most pressing issues and lay the foundations for future work. As progress is made on these near-term priorities, subsequent areas of focus will be identified to build upon the progress achieved... This incremental approach to work recognizes the evolving nature of DERs and the pace of innovation, providing flexibility to respond to new information, priorities and issues over the course of the policy development work. [Our emphasis.]

¹ EB-2018-0287

² EB-2018-0288

4. This incremental approach also precludes broader, thornier policy questions from stalling near term, concrete and practical steps in support of energy sector evolution. The broader, thornier policy issues are important, and should be addressed, but need not stall the near term progress on matters that are amenable to immediate action.
5. In order to move regulatory response to DERs forward, in the near term, the FEIWG's specific tasks were focussed on *"use by utilities' of DERs that they do not own as alternatives to traditional solutions to meet distribution needs"* and *"information distributors require regarding existing DERs to effectively operate and make future system plans"*.³ (Our emphasis.)
6. We believe that the focus on distributors reflects the OEB's intention to provide increased clarity on the regulatory treatment of DERs in an area which is squarely within the OEB's purview to regulate; electricity and natural gas distribution services. AMPCO and IGUA support that near term focus.

General Comments

7. The members of AMPCO and IGUA are among Ontario's largest energy consumers. They rely on natural gas and electricity for their industrial processes and global competitiveness. They also support innovation, including in respect of energy services. Indeed, they invest billions of dollars to that end, both for "Environmental, Social and Governance" (ESG) reasons, and because it makes good business sense.⁴
8. On behalf of these customers, and informed by the FEIWG Report, AMPCO and IGUA share the view that in order to *"provide increased regulatory clarity"* in the regulatory treatment of DERs at this time:
 - (a) The appropriate scope of a benefit cost analysis (BCA) for the purpose of deciding when and how DERs are appropriately utilized by distributors as alternatives to traditional solutions to meet distribution system needs is one that focusses on the net benefit of such utilization to that distributor's services to its customers.

³ Appendix A to the more general Terms of Reference provided to the FEIWG through the OEB's May 10, 2021 letter to interested parties.

⁴ Examination by IGUA's counsel of the Enbridge Gas Inc. (EGI) witness panel in the recently completed oral portion of EGI's 2023-2027 DSM Plan application underscores this point. See EB-2021-0002, Transcript Volume 1 (March 28, 2022), pages 14 through 47, and Exhibit K1.2.

- (b) Prior to developing incentives for distributors to facilitate adoption of DER solutions to meet distribution system needs, the OEB should focus its work on removing disincentives to doing so.
 - (c) In order to harness DER investment in a way which would benefit both implementing customers and distribution systems, information flows regarding the potential value of DERs to energy distributors should be two way, so as to inform distributors on existing and proposed DER resources, and to inform DER developers and “prosumers” (i.e. consumers who provide energy services for themselves as well as potentially for the system at large) on what DER resources would be of most value to their distributor.
9. As next steps, AMPCO and IGUA endorse the FEIWG Report recommendations that the OEB:
- (a) Provide direction on the scope of BCA to be applied for decision making regarding distributor deployment of DERs in the alternative to traditional distribution systems solutions.⁵
 - (b) Address issues related to the appropriate recovery of a utility’s costs associated with adopting DER solutions, including addressing any disincentives for adoption of DER solutions. If recovery of such costs is incomplete, delayed, or includes undue risk because current cost recovery approaches do not adequately account for DER-related activities, this could present a disincentive for utilities to adopt DER solutions.⁶
 - (c) Provide for information flows both ways as between utilities and “the market” about distributor’s needs, so that solutions can be optimized, offered and effectively utilized.⁷
 - (d) Encourage natural gas and electricity distributors to consider one another’s system plans to optimize their respective assets.⁸

Benefit Cost Analysis

10. AMPCO and IGUA have paid particular attention to the BCA topic which the FEIWG was asked to examine, given the competing views on the topic reflected in the clear and comprehensive BCA Subgroup Report (BCA Report).

⁵ FEIWG Report, page 11 and page 18, recommendation 3.

⁶ FEIWG Report, page 12 and page 18, recommendation 4.

⁷ FEIWG Report, page 13 and page 18, recommendation 6.

⁸ FEIWG Report, page 16, which notes that the OEB’s *Regional Planning Process Advisory Group* recommendations to the OEB also recognize the advisability utility of such an approach, and page 19.

11. For Ontario's largest volume energy consumers, who compete for capital – both internal and external – and for whom energy costs are among the largest of input costs and directly affect their decision making and competitiveness, “price fidelity” is important.
12. Proper allocation of costs to follow benefits is a fundamental tenant of economic regulation for a reason. It enhances accountability of the price regulated entity, and provides clear signals to the customers of the regulated service of the cost of that service, in turn allowing them to make properly informed and economically optimized decisions.
13. In contrast, including in regulated distribution rates costs associated with benefits beyond those related to energy distribution services would distort price fidelity, undermine transparency, economic discipline and decision making, and create undue cross subsidies across the energy system.
14. The thoughtful BCA Report helpfully raises this issue squarely and clearly. The BCA Report introduction frames the issue as follows:⁹

The Subgroup's discussions uncovered a fundamental difference of opinion regarding the appropriate scope of considerations for decisions regarding DER and traditional solutions.

As a starting point, it was agreed that DERs may present a broad range of benefits. The benefits and costs of DERs are often much broader than traditional distribution investments, and can include impacts to the whole energy system in addition to the distribution system (i.e., capacity, energy, reliability improvements, avoided transmission, and potentially additional ancillary services).

One view is that where these energy system benefits, in aggregate, outweigh energy system costs, in aggregate, to create a net benefit that exceeds that of a similarly evaluated wires solution, then the OEB should approve deployment of that DER by the distributor, all other things equal. Failure to proceed with a DER where that is the case would be a lost opportunity, would be economically inefficient, and would ultimately result in higher electricity bills overall.

The other view was that the FEIWG's current mandate is to examine how DERs can be integrated into distribution system planning and operation, and that costs and benefits should, for decision making purposes in this context, be looked at primarily from the individual distribution system perspective and the DER should be deployed by the distributor where the distribution system benefits of doing so exceed the costs to the distributor's customers of doing so. While this approach might result in lost opportunities in respect of the broader (i.e., outside of the

⁹ June 3, 2022 Framework for Energy Innovation Report of the BCA Subgroup, page 6.

distribution system) benefits of a DER, capturing and securing those benefits is not a role for a distributor and should not be funded by distribution rates.

15. The members of AMPCO and IGUA are of the latter view. Many DERs advocates are of the former view.
16. AMPCO and IGUA support DERs, where their deployment is an economically sound decision.
17. ***AMPCO and IGUA are of the view that if it is proposed that the cost of utilizing a DER as an alternative to traditional solutions to meet a distribution system need is to be recovered from the deploying distributor's customers, then the BCA used for justifying recovery of such cost must be squarely focussed on the costs and benefits to those customers. Benefits accruing beyond the deploying distributor's customers should not be paid for by that distributor's customers.***
18. The BCA Report articulates two variations on the foregoing position.
 - (a) Under the first variation, the costs to be included in distribution rates are limited to those costs that support the provision of distribution services. This is the purest form of traditional economic regulation and provides the greatest degree of price fidelity, in support of properly competitive energy markets and economic decision making by distributors, distribution customers and DER proponents.
 - (b) In the second variation, DER costs can be allocated to a distributor's customers to the extent that the DER provides a net benefit to that distributor's customers, whether in the provision of distribution services or in the provision of other energy services. This variation sacrifices some price fidelity (distribution rates include costs for non-distribution benefits to the implementing distributor's customers - such as avoiding higher cost capacity or energy, for example), in favour of potentially supporting more investment in DERs.¹⁰ Nonetheless, the fundamental economic regulatory principle that costs must follow benefits is generally maintained, and undue cross-subsidy of all customers by some customers is avoided.
19. AMPCO and IGUA are of the view that:
 - (a) The first variation (distribution rates should include only costs driving distribution service benefits) is the appropriate one.
 - (b) A better solution to facilitating energy system benefits from DER deployment beyond distribution system benefits would be for the OEB to consider how it might,

¹⁰ BCA Report, page 20, 3rd full paragraph.

within its jurisdiction, provide for recovery of costs associated with non-distribution benefits from other parts of the energy system. The BCA Report discusses this notion under the moniker “*Net Regulated Utility Test*”¹¹. For example, if a DER provides both distribution and transmission benefits, and given that the OEB sets both distribution and transmission rates, a regulatory mechanism might be developed to allow for recovery of a portion of the subject DER’s costs in distribution rates and another portion in transmission rates.¹² The BCA Report flags the lack of such a mechanism as a gap¹³, but there is no readily apparent reason why this gap could not be addressed by the OEB, as is effectively advocated elsewhere in the report¹⁴. The BCA Report reflects a consensus that efforts to create better mechanisms for costs to follow benefits should be expedited¹⁵, and that co-ordinated procurements and planning could also help¹⁶. AMPCO and IGUA support these substantive recommendations as practical paths forward.

- (c) Including in distribution rates costs that benefit customers other than the implementing distributor’s customers would be an unsound regulatory practice (and it could be argued in excess of the OEB’s jurisdiction).
20. In respect of the potential to create additional mechanisms to allow costs of DERs to follow benefits of DERs, there is an important nuance in the BCA Report that should be clearly identified and carefully considered. In respect of proposed future work¹⁷, the BCA Subgroup recommends that the OEB develop a BCA framework to serve two purposes:
- (a) A “*decision-making purpose*”, identifying the scope of BCA to be applied for decision making regarding distributor deployment of DERs in the alternative to traditional distribution solutions; and
 - (b) An “*information purpose*”, identifying the scope of BCA that the OEB expects distributors to include in filings seeking approval for deployment of DERs in the alternative to traditional distribution system investments.
21. The “*information purpose*”, which should be considered distinctly from the “*decision making purpose*”, is articulated elsewhere in the report as follows:¹⁸

Most of the Subgroup agreed on the value of a BCA framework that captures a broad range of DER benefits (and associated costs) and includes an assessment of the net energy system benefits to all ratepayers of the solutions being compared.

¹¹ BCA Report, page 20.

¹² BCA Report, page 34, first bullet. See also EB-2018-0013 Decision and Order dated September 20, 2018, pages 5-6, wherein an OEB Hearing Panel recognized the possibility of developing such mechanisms.

¹³ BCA Report, page 18, bullet point 1.

¹⁴ BCA Report, page 23, full paragraphs 4 and 5.

¹⁵ BCA Report, page 18, last full paragraph.

¹⁶ BCA Report, page 23, last full paragraph and page 34, last bullet.

¹⁷ BCA Report, Section 7 starting at page 33.

¹⁸ BCA Report, Pages 6 -7.

Even under a narrower view of the role of Ontario distributors and OEB decision making in respect of deployment by Ontario distributors of DERs, it was agreed that a broad view of DER benefits can inform discussions and decisions regarding additional DER benefits and how those can be captured and compensated to advance the cost-effective deployment of DERs.

...

The Subgroup has recognized that the broader nature of the potential DER impacts has two major considerations affecting a BCA framework for DERs:

- An analysis intended to holistically compare DERs and traditional distribution investments should consider the broader impacts to make a reasonable comparison of these alternatives and shed light on the investments that may be in the best overall interest of consumers and other stakeholders.*
- At a minimum, this analysis would allow the OEB and other decision and policy makers to consider the distribution of these broad benefits among stakeholders in the energy sector and the implications thereof for the appropriate distribution of costs.*

22. To reiterate, AMPCO and IGUA support energy sector innovation. AMPCO and IGUA further agree that there is value to a BCA framework that captures a broad range of DER benefits and associated costs, and includes an assessment of the net energy system (and perhaps net social) benefits to all ratepayers (and citizens) of the solutions being compared. However, there is one important caveat to this position, which caveat is also articulated in the BCA Report:¹⁹

The Subgroup recognizes the potential complexity and administrative burden of carrying out these BCAs, particularly the broader BCA, and particularly for smaller distributors. To address this concern, the BCA framework should also include standard methods, assumptions and tools in support of achieving its determined purpose.

23. ***If a broader BCA is to be conducted by distributors to inform broader DER policy discussions;***
- (a) ***The OEB should nonetheless be clear that this broader analysis would be for informational purposes, and not decision making purposes. A lack of clarity on this point will merely defer this fundamental determination and the objective of providing regulatory clarity will be undermined.***

¹⁹ BCA Report, page 11.

- (b) ***The task and associated costs to the deploying distributor and its customers of conducting such broader analyses should be modest. AMPCO and IGUA defer to distributors to assess what a reasonably modest degree of effort to this end would be, and what standardized tools would so ensure, but see this as a necessary condition to the wisdom of directing deploying distributors to analyze costs and benefits beyond those to their own customers.***

24. AMPCO and IGUA also wish to comment on the propositions put forward in the BCA Report in articulation of the view which favours the broader “Energy System Test”. Under this test, all energy system impacts to all customers in Ontario are evaluated, and a solution is preferred (which implies “should be approved”) if it results in the greatest net energy system benefits to energy customers overall. The points advocated by those in favour of this broader test (italicized below), and AMPCO and IGUA’s response thereto, are:

- (a) *Uneven distribution of benefits or costs should be considered separately and resolved through mechanisms that do not involve continually picking a sub-optimal solution.*

The better approach is to find the resolving mechanisms, not proceed to ignore or indefinitely defer the need for them.

- (b) *Distributional fairness should be evaluated across a portfolio of projects rather than on a case-by-case basis.*

The theory underlying this proposition, as we understand it, is that if enough DER deployment is done, and everyone bears costs associated with benefits that accrue to others, then it will all even out in the end. While a comforting notion, there is no analysis in support of such an outcome, nor when or at what scale it would be achieved if it could be achieved.

- (c) *If distributional unfairness persists at the portfolio level, mechanisms can be developed to compensate the implementing LDC’s customers and transfer those costs to the provincial ratepayers who benefit from the DERs. Distributional fairness can be addressed through policy at a later date, but constructing sub-optimal projects cannot be reversed until the asset is retired.*

This position is tantamount to ignoring or indefinitely deferring the issue rather than addressing it. It is effectively the same as the first position noted above, and the same response applies; address and resolve the problem before it develops, not at some point down the road, perhaps.

Conclusion

25. In providing the FEIWG with a measured and concrete scope of work, the OEB has recognized its particular role in the larger energy transition. As recognized in the very first sentence of the FEIWG Report:

Through the Framework for Energy Innovation (FEI) consultation, the Ontario Energy Board (OEB) is seeking to provide increased regulatory clarity in the treatment of innovative energy services technologies and approaches, and [thus] support the adoption of novel, cost-effective solutions in electricity and gas services by utilities and other sector participants in ways that enhance value for customers.

26. AMPCO and IGUA agree that DERs can provide value to Ontario's energy system. The OEB's focus in this consultation has been, and should remain, ensuring that costs and benefits to regulated operations are properly identified, and that costs ultimately follow benefits in rates for those operations as set by the Board.
27. AMPCO and IGUA were given the opportunity to participate directly in the FEIWG, and are grateful for that opportunity. The working group (WG) process was an ambitious one. Despite a purposefully constrained scope of work, given the complexity of the topic and the many and disparate interests represented, the discussions and considerations of the WG and its subgroups were themselves complex and, at times, inconclusive. Yet over the course of the many meetings held, all WG participants were able to contribute to the discussions. The many and varied views, the complexity of the subject matter, and the productive and well intentioned contributions of the WG members are all reflected in the WG Report and subgroup reports. AMPCO and IGUA commend the WG members for their efforts and the quality of the resulting reports.
28. AMPCO and IGUA also commend the OEB for its continuing efforts to advance policy work in the area of the "energy transformation" in general, and DERs in particular. In an earlier phase of these consultations OEB Staff suggested that "[r]egulatory adaptation can help mitigate risks and help consumers benefit from emerging opportunities"²⁰. The work mandated for the FEIWG reflects a continued commitment by the OEB to adapt to, mitigate

²⁰ EB-2018-0287/0288, *Utility Remuneration and Responding to Distributed Energy Resources Consultation*, Staff Presentation to February 20, 2020 Stakeholder Conference, page 5.

risks of, and help consumers benefit from, emerging opportunities associated with the energy transformation.

29. We further commend the OEB for providing the FEIWG with thoughtful, purposeful and clear direction on the scope for its work. As we have emphasized earlier in these comments, the OEB took a measured approach. While expressly anticipating that the work of the FEIWG *“is expected to generate suggestions and proposals for subsequent workstreams”*²¹, the mandate provided to the FEIWG was focussed on near-term priorities related to use by regulated distributors of DERs they do not own. In particular, the FEIWG TOR provided by the OEB²² directed a focus on:

- (a) utilities’ use of DERs they do not own as alternatives to traditional solutions to meet distribution needs; and
- (b) ensuring that utility planning is appropriately informed by DER penetration and forecasts.

In both cases the TOR expressly focussed on the impact and potential impact of non-utility owned DERs on regulated distribution utility operations.

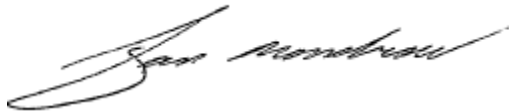
30. This focus on regulated distribution utility operations is consistent with the OEB’s role within Ontario’s energy sector and in respect of the energy transformation. The Board should neither lag nor predetermine technological change in the way energy is produced, provided and consumed. Rather the Board should stay abreast of that change and take incremental steps to evolve its own regulatory framework so as to provide the utilities which it regulates and their customers on behalf of whom it regulates the ability, and tools, to embrace and benefit from the opportunities presented by that change.
31. The FEIWG Report reflects a broad consensus that DERs can provide value to Ontario’s energy system. AMPCO and IGUA agree. The OEB’s focus should be on the removal of unintended barriers to energy services evolution arising from its own regulatory framework, and to ensuring that in setting regulated rates the costs associated with that evolution ultimately follow the benefits thereof.

²¹ EB-2021-0118 OEB Letter to Interested Parties dated May 10, 2021, page 2.

²² EB-2021-0118 OEB Letter to interested parties dated May 10, 2021.

32. The OEB is to be commended for the inclusive approach that it has taken in these matters to date, including in constituting the FEIWG to include a broad and varied set of interests. While convening a 22 member working group representing 25 distinct interests rendered discussions of these important and multi-faceted topics challenging, it also resulted in a set of reports which are robust and reflective of a range of informed and engaged stakeholders.
33. Finally, AMPCO and IGUA would like to commend OEB Staff for their critical and supportive role in shepherding this stage of the consultation to completion in a manner that respected the interests of all WG members, and respects the interests of all stakeholders, in providing input on this important work.
34. In the substantive and practical recommendations offered by the WG, and in particular those highlighted in these comments, AMPCO and IGUA believe that the OEB has a sound basis for providing initial direction and scoping further evolutionary work.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



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