VIA RESS

June 9, 2025

Ritchie Murray
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ritchie Murray:

Re: Ontario Energy Board
Proposed Distribution System Code Amendment for Non-Wires Solutions
Default Incentive Payment
Consumers Council of Canada (CCC) Comments
OEB File No. EB-2025-0083

In accordance with the Notice of Proposal to amend the Distribution System Code (DSC) regarding a Margin on Payment Incentive Mechanism for the use of Third-party Distributed Energy Sources as Non-wires Solutions, dated May 16, 2025, please find attached the Consumers Council of Canada's (CCC) comments on the proposed amendments.

Yours truly,

Lawrie Gluck

Lawrie Gluck
Consultant for the Consumers Council of Canada

Background

The OEB issued a Notice of Proposal to amend the Distribution System Code (DSC) regarding a Margin on Payment Incentive Mechanism for the use of Third-party Distributed Energy Sources as Non-wires Solutions on May 16, 2025 (Notice of Proposal to Amend the DSC). The Notice of Proposal to Amend the DSC sets out the OEB's proposal to establish a default margin on payment (MoP) incentive of 25% of the total payments to a third-party Distributed Energy Resource (DER) provider, along with certain eligibility criteria for the incentive payment. At the same time that the Notice of Proposal to Amend the DSC was issued, the OEB also issued a Report by Guidehouse Canada Ltd. (Consultant Report), which includes recommendations for a default MoP value and options for eligibility criteria.[1]

The Consumers Council of Canada's (CCC) comments on the proposed DSC amendments are set out in detail below. In summary, we recommend:

- The OEB should not proceed with the planned amendments to the DSC as establishing a default incentive based on a MoP is not appropriate. More specifically, codifying a default incentive value for the use of third-party distributed energy sources as NWSs limits flexibility and a "one-size fits all" approach will not lead to optimal outcomes.

- Should the OEB proceed with an amendment to the DSC to include a default MoP incentive despite the foregoing deficiencies with the proposal:

    - certain changes to the incentive level and the eligibility criteria should be made; and

    - certain changes to the proposed language for section 11 of the DSC should be made to reflect that a prudence review of the relevant third-party NWS is still required and that a third-party DER provider should not include affiliates.

Consultation Process and the Proposal to Codify a Default Incentive Value in the DSC

[1] EB-2025-0083, Notice of Proposal to amend the Distribution System Code (DSC) regarding a Margin on Payment Incentive Mechanism for the use of Third-party Distributed Energy Sources as Non-wires Solutions, May 16, 2025.

The consultation process undertaken by the OEB with respect to the proposed establishment of a default incentive value for the use of third-party distributed energy sources as NWSs was not transparent nor will it lead to an optimal outcome.

Instead of moving directly to a proposed amendment to the DSC, the OEB should have sought input from stakeholders on three high-level questions:

- Is a default incentive value needed?
- Should the default incentive value be codified in the DSC?
- Is the MoP approach to establishing the default incentive value optimal?

In support of answering these questions, it would have been helpful to have the Consultant Report more broadly reflect analysis and potential calculations for setting incentive values using other methodologies (specifically, the SSM). Asking these questions, and providing a more broadly scoped Consultant Report, would have allowed the OEB to receive more comprehensive feedback from ratepayer groups and utilities regarding the appropriate approach forward.

Given that this is our only opportunity to provide feedback on the OEB's proposal, we note that our answer to each of the three questions set out above is no.

First, we submit that establishing a default incentive value (and codifying that value in the DSC) is not appropriate. Applying a "one-size fits all" approach limits the OEB's discretion in the application where a third-party DER as NWS proposal is made to properly link the incentive value to the actual NWS proposed. The OEB's approach to set a default value ignores the nature of the solution, the scale of the solution, the contractual arrangement with the third-party service provider and the associated risk of the solution to ratepayers. The OEB should have comprehensive information about the proposed solution prior to approving an incentive payment.

Second, we submit that codifying what, based on the OEB's existing practice, is typically considered rate-making guidance creates a dangerous precedent in an evolving energy sector. This planned action makes it significantly more difficult for the OEB to change course if external factors necessitate a change to the OEB's ratemaking policies (as the

OEB would first need to amend its codes before a change could be implemented through the adjudicative process).

Third, we submit that establishing a default incentive value using the MoP approach is not optimal. The OEB practices performance-based regulation with a focus on outcomes. As noted by the OEB in its Report on the Renewed Regulatory Framework for Electricity Distributors:

> "The renewed regulatory framework is a comprehensive performance-based approach to regulation that is based on the achievement of outcomes that ensure that Ontario's electricity system provides value for money for customers. The Board believes that emphasizing results rather than activities, will better respond to customer preferences, enhance distributor productivity and promote innovation."[2]

The establishment of the incentive value based on a MoP emphasizes activities not outcomes. A MoP allows the distributor to receive its incentive payment regardless of the outcome of the solution as the incentive is tied to payments to a third-party. If the solution results, on an actual basis, in no net benefit to ratepayers, the distributor will nonetheless receive its incentive payment. In contrast, an incentive payment based on an SSM ties the payment directly to actual outcomes. This is clearly better aligned with the OEB's outcomes-based approach to rate regulation. It is not clear why the OEB determined that a MoP approach for the default incentive value is aligned with its own approach to rate regulation and is in the best interest of ratepayers.

We acknowledge that it may be beneficial to provide distributors with additional guidance on the OEB's expectations regarding incentive payment calculations for third-party distributed energy sources as NWSs (relative to the guidance provided in the Filing Guidelines for NWS Incentives).[3] In that regard, the OEB should establish "example" calculations for incentive payments, which could be provided in the form of further policy guidance to the sector. These "example" incentive payment calculations should include the SSM along with the MoP and scorecard approaches set out in the Filing Guidelines for NWS Incentives.[4] This will provide distributors with a better understanding of how the OEB

[2] Report of the OEB, Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach, October 18, 2012, p. 2.
[3] Filing Guidelines for Incentives for Electricity Distributors to Use Third-Party DERs as Non-Wires Alternatives, March 28, 2023.
[4] Ibid., pp. 7-9.

expects incentive payments to be calculated (and will support their filings for the use of third-party distributed energy sources as NWSs).

Proposed Default MoP Incentive Value and Eligibility Criteria

In the circumstance that the OEB disagrees with our comments above regarding the appropriateness of establishing a default MoP incentive value through an amendment to the DSC, our comments on the parameters of the proposal are set out below.

The OEB's proposal is to set a default MoP value of 25% of the total payments to the third-party DER provider. The OEB is also proposing two eligibility criteria:

- The third-party owned solution must have a positive forecast net benefit, as calculated using the quantitative impact categories identified in the Distribution System Test (DST) set out in the OEB's Benefit-Cost Analysis Framework for Addressing Electricity System Needs (BCA Framework); and

- The net present value of the forecast MoP incentive amount cannot exceed 50% of the net present value of the forecast net benefit of the proposed third-party DER solution.[5]

We recommend that the OEB should:

- Reduce the default MoP value to 15% of total payments to the third-party DER provider;

- Establish the requirement that the forecast MoP incentive amount cannot exceed 30% (instead of 50%) of the net present value of the forecast net benefit of the proposed third-party DER solution; and

- Include an additional eligibility criterion that the total incentive payment across all of a distributors NWSs cannot result in bill impacts higher than 0.25% on average.

[5] EB-2025-0083, Notice of Proposal to amend the Distribution System Code (DSC) regarding a Margin on Payment Incentive Mechanism for the use of Third-party Distributed Energy Sources as Non-wires Solutions, May 16, 2025, pp. 3-4.

The OEB's proposed approach to codify a MoP-based default incentive value effectively transfers all the risk of the potential results of currently unknown NWSs to ratepayers. At the time that the default incentive value is being established, we have no information about the potential solutions and the validity of the inputs to the underlying cost/benefit analysis that will be filed in application seeking funding for the NWS and the related default incentive. The Consultant Report recognizes this as follows:

> "If a distributor retains 100% of forecast realized benefits as an incentive, then customers derive no net benefit but are also not exposed to any net cost from the NWS. Only forecast, not realized, benefits are available to test eligibility, however, so customers are exposed to risks related to forecast error. The Guidehouse team believes it would be imprudent and unrealistic to assume that forecast error will be symmetrical. Guidehouse expects that NWS will underperform forecast net benefits more frequently than they overperform them. This conclusion is based on the Guidehouse team's extensive experience conducting empirical impact evaluations of DERs (including managed electric vehicle charging, pricing and enabling technology mechanisms, demand response, and battery control). This conclusion is also based on the observation that the application of DERs to meet distribution system needs is a practice still in its infancy, and not a mature application."[6]

Guidehouse applies this understanding of the likely forecast error to establish options for the maximum percentage of the net benefit that can be paid as an incentive value and the overall MoP value set out in the Consultant Report.

We submit that the default incentive value (and eligibility criteria) proposed by the OEB (as supported by the Consultant Report) is not commensurate with the risk that will be experienced by ratepayers. To reduce the risk to ratepayers that the NWSs will, on an actual basis, underperform forecast net benefits, the simplest solution (if the OEB continues down the unadvisable path of codifying an incentive value based on MoP) is to reduce the incentive payments and strengthen the eligibility criteria to the benefit of ratepayers. In this regard, we believe that an incentive value of 15% of the total payments to the third-party DER provider is appropriate. This matches the MoP value in Michigan, which, based on the Consultant Report, appears to have achieved its goal of peak demand response capacity (at least for the two largest utilities).[7]

We also recommend that the forecast MoP incentive amount cannot exceed 30% of the net present value of the forecast net benefit of the proposed third-party DER solution. This will allow for a greater degree of forecast error (i.e., the incentive payment is less likely to be

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[6] EB-2025-0083, Guidehouse Report on Incentives for Distributors Using Third-Party Distributed Energy Resources as Non-Wires Alternatives: Margin on Payments, April 16, 2025, p. 7.
[7] Ibid., p. 13.

larger than the actual net benefit) than the proposal. In addition, the 30% value aligns with Guidehouse's "Option B", for which Guidehouse believes "near-term customer value can be more stringently protected…"[8]

Finally, we recommend that an additional eligibility criterion that the total incentive payment across all of a distributors NWSs cannot result in bill impacts higher than 0.25% on average should be included. As drafted, the proposal does not reflect any protection for ratepayers from the cumulative bill impacts caused by the default incentive payments when associated with multiple NWSs. Though unlikely in the near-term, there could be a scenario where a single distributor brings forward numerous NWS (and associated default payment incentives) proposals and the combined impact of the incentive payment on ratepayers is material. Given that the MoP approach pays the incentive on forecast results, ratepayers could end up paying a material incentive (when accounting for all the NWSs for a single distributor) and receiving no actual benefit. This suggested criterion simply provides protection from that scenario. We recommend a 0.25% bill impact cap as it appears to align with Guidehouse's "affordability criterion."[9]

Note that our view on the need for a reduced incentive value, along with more stringent eligibility criteria, is related to the OEB's proposal to include the incentive as a default value in the DSC. There may be NWS proposals filed that are well supported by evidence and have very sound cost/benefit analysis (potentially supported by actual outcomes in other jurisdictions) that could attract a higher incentive (as the risk is lower). However, when setting a default value in the absence of any evidence of the proposed third-party NWSs, a more conservative approach is in order.

Specific Language for the Proposed Amendments to the Distribution Code

CCC also has a few comments on the proposed language for the DSC amendments.

Section 11.3 states:

> "Where the Board is satisfied that an application for a Margin on Payments incentive meets the requirements of sections 11.5 to 11.7, a distributor's rates shall be set by including a

[8] Ibid., p. 17.
[9] Ibid., pp. 10-11.

> Margin on Payments incentive of 25%, or such lesser amount as may be requested by the distributor to meet the criterion in section 11.5 or for some other reason."[10]

It does not appear that the requirements set out in sections 11.5 to 11.7 refence the need for the filing of evidence to support the prudence of the NWS nor is there reference to the need for the underlying NWS to be approved by the OEB in order to receive a MoP incentive. The body of Notice of Proposal to Amend the DSC does speak to the requirement for an applicant to "provide evidence of the prudence of the proposed NWS itself in alignment with s. 3 of the NWS Guidelines."[11] Similar language should be included directly in the DSC amendment. In addition, a requirement that the underlying NWS be approved by the OEB in order to receive an incentive payment should be included.

Finally, the definition for "third-party DER" speaks only to the DER not being owned by the distributor.[12] Presumably, the asset cannot be owned by an affiliate of the regulated distributor as the payment of an incentive to the distributor in that scenario would appear to be inappropriate. This should be rectified if the OEB does amend the DSC with respect to a default incentive payment.

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[10] EB-2025-0083, Notice of Proposal to amend the Distribution System Code (DSC) regarding a Margin on Payment Incentive Mechanism for the use of Third-party Distributed Energy Sources as Non-wires Solutions, May 16, 2025, Appendix A, p. 2.
[11] Ibid., p. 6
[12] Ibid., Appendix A, p. 2.