

## SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

### RE: RATE PROTECTION AND THE DETERMINATION OF DIRECT BENEFITS UNDER ONTARIO REGULATION 330/09

EB-2009-0349

#### INTRODUCTION:

On September 25, 2009 the Ontario Energy Board ("Board") issued a letter initiating a consultation process to determine what constitutes the direct benefits that accrue to the consumers of an electricity distributor as a result of an eligible investment made or planned to be made by the distributor to accommodate a renewable energy generation facility. On December 14, 2009, the Board released a Board Staff Discussion Paper regarding the determination of such direct benefits, and to invite written comment on it. These are the comments of the Consumers Council of Canada ("Council") on the Board Staff Discussion Paper entitled, "Proposed Framework for Determining the Direct Benefits Accruing to Customers of a Distributor under Regulation 330/09" ("Discussion Paper").

The Discussion Paper set out a number of questions being posed by the Board. The Council has organized its comments consistent with the format set out in the Discussion Paper.

#### GENERAL COMMENTS:

The *Green Energy and Green Economy Act, 2009* ("GEGEA") has amended the *Ontario Energy Board Act, 1988* ("OEB Act") and added to the list of objectives for the Board the following:

To promote the use of generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. (OEB Act, subsection 1(1))

As a result of the introduction of this new objective the Board has been taking a number of steps to shift costs previously the responsibility of generators connecting to distribution systems, to utility ratepayers. Changes to the Distribution System Code were finalized on October 21, 2009. In addition, Ontario Regulation 330/09 ("O. Reg. 330/09") was finalized on September 9, 2009, setting out the framework for a mechanism to allow certain "eligible investments" made by distributors for the purpose of connecting or enabling renewable generation to be recovered from all provincial ratepayers rather than solely from the ratepayers of the distributor making the investment.

The mechanism for provincial recovery of some costs is being put in place on the theory that renewable energy development will not be distributed evenly among the service territories of the electricity distributors, though all ratepayers are ostensibly to benefit. As the Discussion Paper notes in the absence of a cost-sharing mechanism the cost burden of distribution system investments to accommodate this renewable generation would not be shared equally amongst distributors and their ratepayers (p. 1).

The purpose of this consultation is to establish a Board policy that identifies :

1. Direct benefits that accrue to utility customers as a result of eligible investments made by the distributor;
2. A standard methodology to be used in calculating or quantifying those direct benefits.

The determination of the direct benefits is to be used to establish the cost allocation of these new costs between provincial ratepayers and the ratepayers of individual distributors.

The Council has a number of preliminary comments about this consultation:

- The GEGEA has introduced a fundamental shift in the way in which the costs of the electricity system are recovered from ratepayers. In effect, costs previously the responsibility of generators are now shifting to ratepayers. Given the Board's obligation, set out in the OEB Act, to protect consumers with respect to prices, careful consideration must be given to ensure, under this new framework, the interests of consumers are sufficiently protected. For the Board to simply issue a Discussion Paper for comment as the only step in finalizing this important new policy is not adequate. The Council submits that interested parties should be afforded the opportunity to consider the views of others and make further submissions. In addition, given the complexity of the proposals described in the Discussion Paper, the Board should establish a stakeholder forum to facilitate further understanding, discussion and debate. The concept of provincial cost recovery has been established. It is critical for ratepayers in Ontario to ensure that policy is implemented in the fairest way possible. From the Council's perspective, in order to do that, a fairer and more comprehensive process is required.
- There is a great deal of uncertainty about how the development of renewable energy projects will evolve. There is also a great deal of uncertainty regarding the overall costs of these investments. Ultimately Ontario consumers will bear the costs. That has been established through the changes in legislation. For those costs borne by one set of utility ratepayers and the costs that will be recovered province-wide there should be some form of true-up mechanism applied. In effect, ratepayers should not be required to pay for costs that are not actually incurred. Similar to the recovery of smart meter costs, only those costs actually incurred and deemed to be prudent should be recovered from ratepayers. Without such a mechanism in place there is a risk that ratepayers will be required to pay more for projects that do not materialize.
- The implementation of any cost recovery mechanisms should be subject to ongoing monitoring and evaluation. The Board must ensure that the mechanisms, once implemented continue to be fair to ratepayers.
- The Board should initiate a process, as soon as possible, to consider the implementation of the provincial cost recovery mechanism. Although the mechanism has been defined through regulation the implementation details have not been established. For example, will the costs

be subject to a true up? What are the appropriate timelines regarding cost recovery? What specific tests should be applied when determining "eligible investments"? For those utilities in the middle of an incentive regulation mechanism term, how do they apply for provincially funded cost recovery?

## **THE DISCUSSION PAPER:**

### **Setting the Context (Section 2):**

The Discussion Paper states that investments required by distributors in order to facilitate and connect renewable generation are likely to vary widely such that a single methodology for estimating benefits may not be appropriate. The Board should develop a consistent policy to be applied across the Province.

The Discussion Paper notes that, unless a certain smart grid investment has been identified in the DSC as a Renewable Enabling Improvement, such investments are not "eligible investments" for the purpose of the OEB Act and the regulation. The Council submits that the Board will need to establish more clarity around the definition of "eligible investments" and smart grid investments that are clearly not "eligible".

### **Direct Benefits (Section 3):**

*Issue for Comment - 1: In addition to the two types of direct benefits identified above (i.e., reduced transmission and WMSC charges, improved capability of the distribution system), should the Board take into account any other direct benefits that accrue to customers of the distributor making the investment?*

Board Staff proposes to limit the scope of the direct benefits to those that are directly attributable to only those customers making the investment and those that are readily quantifiable on monetary terms. The Council supports this approach.

With respect to additional benefits, the Council submits that the distributors are in the best position to indicate to the Board if additional benefits should be considered. Allowing for a second round of comments would give parties an opportunity to consider the merits of expanding the scope of the benefits beyond that provided by Board Staff.

*Issue for Comment - 2: Are there any circumstances under which a distributor should be permitted to deviate from the proposed ex-post approach and use ex ante (i.e. forward looking forecast) approach?*

The Council supports the use of an ex-post approach for the reasons set out by Board Staff. Given the level of uncertainty regarding the timing and cost of renewable generation, this approach makes more sense than one that would require forecasting by the distributor. It is apparent that Hydro One Networks will be required to connect more renewable generation than any other utility in the Province. To the extent they were able to provide a forecast, a variance account approach may be preferable for HON.

*Issue for Comment - 3: Are there potential refinements to the proposed Guiding Principles discussed above?*

The Council has no suggestions for potential refinements to the proposed Guiding Principles.

*Issue for Comment - 4: Should any additional Guiding Principles be considered by the Board?*

The Council submits that a further guiding principle should be added, "The framework should be administered in the most cost-effective way possible." The Council has concerns about the extent to which the administration of this framework will add to a distributor's revenue requirement. We want to ensure that the process results in a fair allocation of costs, but are concerned that the introduction of such a policy may require extensive consultants' reports and studies. These types of studies should not be required.

*Issue for Comment - 5: Are there any potential refinements to the proposed criteria discussed above for the purpose of estimating the direct benefits?*

At this time the Council does not propose any potential refinements to the proposed criteria.

#### **CONCLUSION:**

With respect to the remaining issues set out the Discussion Paper, the Council has no submissions at this time. Both the complexity and the importance of this initiative a more comprehensive process is required. Before making further submissions the Council would benefit from discussions with Board Staff, the utilities and other stakeholders. At a minimum, a further round of comments, following a stakeholder forum, should be used. Currently the Board has established a process that limits the ability of stakeholders to contribute in a meaningful way. There may well be alternative approaches proposed, ones that either replace or enhance the approach proposed by Board Staff. The Council would like to consider the merits of such approaches.

The electricity sector is fundamentally changing as a result of the GEGEA. The Government had made explicit policy choices and the implementation of those decisions is now underway. The Board has an obligation to ensure that, in facilitating the initiatives established through the GEGEA, the interests of utility ratepayers are paramount. Moving to a system where utility investments are to be funded in way that deviates from long-standing rate-making policies requires careful consideration. The Council believes that the Board should establish a process that allows for that careful consideration, particularly where, as here, the proposals under consideration are so complex. To move forward with this initiative, and others arising out of the GEGEA, at the speed, and with the limited consultation established by the Board is not, in our view, the appropriate approach.