



January 21, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge St., Suite 2700
Toronto, ON, M4P 1E4

Dear Ms. Walli:

**RE: Notice of Proposal to Amend Codes
Proposed Amendments to the Distribution System Code and the Affiliate
Relationships Code for Electricity Distributors and Transmitters
Board File No.: EB-2009-0411**

On December 10, 2009 the Ontario Energy Board (the “Board”) issued a Notice of Proposal to Amend Codes (the “Notice”) inviting comments on the Proposed Amendments to the Distribution System Code (the “DSC”) and the Affiliate Relationships Code for Electricity Distributors and Transmitters (the “ARC”).

This is the submission of the Coalition of Large Distributors (the “CLD”). The CLD comprises Enersource Hydro Mississauga Inc., Horizon Utilities Corporation, Hydro Ottawa Limited, PowerStream Inc., Toronto Hydro-Electric System Limited, and Veridian Connections Inc. The CLD appreciates this opportunity to provide input into this important step in furthering the goals of the *Green Energy and Green Economy Act, 2009* (the “GEA”).

The CLD is generally very supportive of the proposed amendments and has the following comments:

1. Inclusion of Developed and Constructed Qualifying Facilities

This comment pertains to Attachment A - Proposed Amendments to the Affiliate Relationships Code for Electricity Distributors and Transmitters (Proposed Sections 2.2.3A, 2.2.3B (including 2.2.3B (b)), 2.3.4A.1, 2.4.1B, 2.4.3, and 2.5.2A). In each of these proposed sections there is a reference to “*the ownership and operation of one or more qualifying facilities*”. The CLD submits that there should be a minor amendment to each of these sections to capture the various aspects in which the affiliate may be involved, with respect to qualifying facilities. An affiliate could be the owner of qualifying facilities or alternatively could be in the business of developing such facilities. Thus, in each proposed section, the phrase should be changed to “the development, construction, ownership and/or operation of one or more qualifying facilities”.

2. Employees to be Shared

In addition, the proposed Section 2.2.3B permits a distributor to share employees under certain conditions. The CLD proposes that this section should be amended slightly to include employees involved in the construction of the distribution system. Part (a) would therefore read: “whose sole or principal function is to construct, operate, maintain or repair the distributor’s distribution system”.

3. Utility Financial Support to an Affiliate

Proposed Section 2.4.3 reads:

Despite section 2.4.2, in the case of a utility that is a distributor any loan, investment or other financial support provided to an affiliate may be provided on terms no more favourable than what the distributor could obtain directly for itself in the capital markets if the loan, investment or other financial support is for the purpose of financing the ownership of one or more qualifying facilities.

The CLD notes that capital market lenders consider different risk profiles in recognition of the fact that each situation is unique. The CLD therefore suggests that any judgement to be made regarding whether or not financial support terms are more favourable must take into consideration the unique circumstances of each distributor and its affiliate, and the applicable generation project.

4. Applicability of Rationale for Code Changes in Energy Conservation

The CLD understands that the proposed amendments, particularly the relaxation of the restrictions in the ARC, are warranted given the fact that, as a result of Section 71(3) of the *Ontario Energy Board Act, 1998* (the “*OEB Act*”), distributors are now permitted to own and operate qualifying facilities. Further, the Board has a new objective from Section 1(1) 5. of the *OEB Act*, “*To promote the use and generation of electricity from renewable energy sources...*” On this basis, the CLD fully supports the statement in the Notice that: “*The Board believes that revisions to the Codes are warranted to keep pace with the fact that distributors may own and operate qualifying facilities, and to support the Board’s new objective of promoting the use and generation of electricity from renewable energy sources.*”

The CLD submits that this same rationale should be used to make similar amendments with respect to energy conservation. In particular, the Board also has an objective, per Section 1(1) 3. of *OEB Act*, “*to promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario...*” Furthermore, consistent with the exception for qualifying facilities, Section 71(2) of the *OEB Act* permits distributors to provide: “*services related to*

- (a) the promotion of electricity conservation and the efficient use of electricity;*
- (b) electricity load management; or*
- (c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources.”*

While this section of the *OEB Act* is not new, the significant change resulting from the introduction of the *GEA* is that in addition to being permitted to undertake conservation and demand management (“CDM”) activities, Section 27.2 of the *OEB Act* will give distributors mandatory conservation targets as a condition of licence.

Given the consistency between the provisions for qualifying facilities and CDM activities, the CLD specifically suggests that changes to the ARC with respect to qualifying facilities should also apply where a distributor wishes to undertake CDM activities through an affiliate. In the absence of this additional flexibility, distributors will have an inappropriate barrier to achieving conservation targets. This is inconsistent with the intent of the *OEB Act*, Section 29(1) of the *Electricity Act, 1998* and the Board’s view that *“the ARC should be as neutral as possible, in this respect.”*

The CLD proposes the following revisions to the definitions and new sections 2.2.3A and 2.2.3B:

Section 1.2 - add the following definition:

“conservation and demand management” means activities that meet the requirements set out in subsection 71(2) of the *OEB Act*.

Section 2.2.3A – Despite section 2.2.3, a utility that is a distributor may share employees that are directly involved in the collection of, or who have access to, confidential information with an affiliate that is an energy service provider and whose activities at the relevant time include the development, construction, ownership and/or operation of qualifying facilities and/or the development and provision of conservation and demand management services.

Section 2.2.3B – Despite section 2.2.3, a utility that is a distributor may share employees that are directly involved in the collection of, or who have access to, confidential information with an affiliate that is an energy service provider and whose activities at the relevant time include but are not limited to the development, construction, ownership and/or operation of one or more qualifying facilities and/or the development and provision of conservation and demand management services, provided that:

- a) The employees to be shared are limited to employees whose sole or principal function is to construct, operate, maintain or repair the distributor’s distribution system; and
- b) The employees may only be shared in relation to activities associated with the development, construction, ownership and/or operation of one or more qualifying facilities and/or the development and provision of conservation and demand management services.

5. Typographical Errors

The CLD respectfully points out the following minor typographical errors in Attachment B Proposed Amendments to the Distribution System Code:

a) 6.2A.2

The list of sections which do not apply, incorrectly lists “6.2.”. It should probably be “6.2.2”.

b) 6.2A.4(d) ii.

The term “ensure that” is incorrectly repeated on the second line.

c) 6.2A.5

The second sentence of that paragraph currently reads “Where the requirement in the standard offer to connection or agreement applies prior to the connection of the...” It should probably be “Where the requirement in the standard offer to connect or agreement applies prior to the connection of the...”

6. Other Amendments to the DSC

While not directly related to the subject consultation, in the interests of efficiency, the CLD suggests that other changes be made to the DSC in order to mitigate administrative burdens on distributors in facilitating FIT and microFIT projects, and to ensure distributors are available to satisfy the legitimate enquiries of all renewable generation developers. The acceptable number of enquiries is expected to vary relative to the nature and complexity of the project concerned. The CLD requests that distributors be allowed discretion to limit their exposure to repetitive enquiries on a per project basis. This could help keep the number of enquiries manageable and allow the LDC to focus its resources on activities that will be of most value. Specifically:

a) Section 6.2.3

Amend this section to require a distributor to make available a generation connection information package only once to any person or representative of (such as a consultant to) that person per each generation facility. Related follow-up enquiries that are deemed by the distributor to be unreasonable will be subject to measures at the distributor’s discretion.

b) Section 6.2.9

Amend this section to require a distributor to meet only once with any person or representative of (such as a consultant to) that person per each generation facility. Repeat requests that are deemed by the distributor to be unreasonable will be subject to measures at the distributor’s discretion.

c) Section 6.2.9.1

Amend this section to require a distributor to provide the listed information only once to any person or representative of (such as a consultant to) that person, per each generation facility. Repeat requests that are deemed by the distributor to be unreasonable will be subject to measures at the distributor’s discretion.

Please contact the undersigned if you have any further questions on this submission.

Yours truly,

(Original signed on behalf of the CLD)

Gia M. DeJulio
Director, Regulatory Affairs
Enersource Hydro Mississauga Inc.

Gia M. DeJulio
Enersource Hydro Mississauga Inc.
(905) 283-4098
gdejulio@enersource.com

Lynne Anderson
Hydro Ottawa Limited
(613) 738-5499 X527
lynneanderson@hydroottawa.com

Colin McLorg
Toronto Hydro-Electric System Limited
(416) 542-2513
regulatoryaffairs@torontohydro.com

Indy J. Butany-DeSouza
Horizon Utilities Corporation
(905) 317-4765
indy.butany@horizonutilities.com

Paula Conboy
PowerStream Inc.
(905) 532-4526
paula.conboy@powerstream.ca

George Armstrong
Veridian Connections Inc.
(905) 427-9870 x2202
garmstrong@veridian.on.ca