

# Ontario Energy Board

## Proposed Amendments to the Distribution System Code and the Affiliate Relationships Code

January 22, 2010

### Ontario Power Authority Comments

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## Background

On December 10, 2009, the Ontario Energy Board (“the Board”) issued a Notice of Proposal to Amend a Code. The Board’s proposed amendments to the Distribution System Code (“DSC”) and the Affiliate Relationships Code (“ARC”) reflect that distributors may now own and operate certain renewable and other generation facilities with the passing of the *Green Energy and Green Economy Act, 2009*. The proposed amendments also support the Board’s new objective of promoting the use and generation of electricity from renewable energy sources. The Board’s proposal would amend the ARC so that certain provisions, which currently restrict the dealings between a distributor and an energy service provider affiliate in relation to activities associated with qualifying facilities, are no longer applicable. This would include alleviating current limitations on financial transactions. The DSC amendments proposed by the Board will provide additional clarity and certainty around the manner in which a distributor is to treat its own qualifying generation facilities for processes such as connecting a generation facility and allocating capacity to a generator.

## OPA Comments

The OPA generally believes that the amendments are appropriate as proposed and should be effective in providing greater clarity and certainty. The OPA concurs with the OEB that it is essential for distributors to treat their generation facilities in the same manner as they would treat generation facilities owned by third parties. This is consistent with the provisions of the Electricity Act with respect to non-discriminatory access. Although Section 26.(1.1) now provides for priority access for renewable generation, the abiding principle set out in Section 26.(1) continues to apply as between renewable generators:

*A transmitter or distributor shall provide generators, retailers and consumers with non-discriminatory access to its transmission or distribution systems in Ontario in accordance with its licence. 1998, c. 15, Sched. A, s. 26 (1).*

Accordingly, the OPA has several suggestions to help further facilitate non-discriminatory access and ensure fairness and transparency amongst generation projects.

The OPA notes a potential perceived conflict of interest in the necessity for LDCs to make payments for generation to themselves, and suggests that some improvements could be made to provide checks and balances against errors or omissions. One possible solution would be for all distributor-owned FIT program generation facilities to become market participants so that payments would be provided directly by the IESO and OPA, rather than by the distribution company itself. This requirement for settlement could avoid a perceived conflict of interest or a necessity for regular third party audits to confirm proper administration of

payments, and would be consistent with modern controllership principles. It is recommended that the OEB explore this possibility further with the IESO, to ensure that the costs of this approach are appropriate for the value to be conveyed. This requirement is not proposed for microFIT projects at this time, in the interest of administrative simplicity. The OPA notes that Section 4.4.8 of the microFIT contract contains a provision allowing the OPA to designate an alternative settlement agent or implement alternative settlement mechanics, should this prove necessary.

With respect to the allocation of existing system capacity, the OPA suggests that it may be appropriate for all LDCs that own generation in their distribution territory to file an annual report with the OEB that describes how existing capacity was allocated in the previous year. This report should be prepared to the level of detail to incorporate stations and feeders, and should explain which projects were allocated capacity, including the allocation of capacity between the LDC and third parties; how many projects did not receive a capacity allocation; and the methods that were utilized to allocate capacity to the projects. This information would ensure a level of transparency in the capacity allocation process and could be included as part of the LDCs' existing reporting requirements.

With respect to allocating future system capacity, the OPA suggests that it would be appropriate for LDCs to disclose in advance expansions or upgrades to facilitate the connection of generation owned by LDCs, their affiliates or shareholding municipalities. Providing this information would improve transparency by providing assurance to the Board and interested parties that capacity has been allocated fairly, and that potential third party generators have equal access to that capacity. This would help to ensure a level playing field for all generators. One appropriate vehicle for this disclosure could be the LDCs' Distribution Plans. The OPA will provide further comments in this regard in its response to the Board's proposed Filing Requirements for Distribution System Plans under the Green Energy Act.

The OPA appreciates the opportunity to provide its comments in this matter, and looks forward to participating further in this process.