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BY EMAIL and RESS

March 31, 2010
Our File No. 2010038

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2010-0038 – DSC Amendments re Contestability

We are counsel for the School Energy Coalition. This letter constitutes SEC's comments on the Board's March 10, 2010 Notice of Proposal to Amend the Distribution System Code (the "Proposal") dealing with the rules for alternative bids.

We note that schools generally do not use the alternative bid provisions of the DSC. They have limited circumstances in which they would be eligible in any case, and for the most part they rely on the local distributor to do any work that is required. While schools will likely be active hosts of FIT and MicroFIT projects, those will in almost every case be small enough that any expansions will be below the dollar threshold for generator contributions. One area in which schools may have more contact with the alternative bid provisions in the future is in microcogen installations. As these systems become more mainstream, schools are prime candidates for their use, and there is the potential that distribution system alterations will be required as a result.

With that very narrow focus, the interests of schools in this issue can be summarized as follows:

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1. *School Safety.* Because of the children in their charge, school officials, both by statute and as part of their normal pedagogical responsibilities, are particularly vigilant with respect to safety issues, including access of new people to school property. School officials need to know who is in and around school property at all times, and this sometimes leads to preferring contractors who are already known to the school. Our experience is that the personnel of local distributors understand and respect this imperative, and there have rarely been any problems with compliance with access restrictions. No changes to the DSC are necessary to ensure that this goal is achieved, and the Proposal does not undermine this goal in any way.
2. *Competitive Market.* Any regulatory or other provision that limits competition for electricity-related services represents a cost to school boards, as reduced competition usually results in increased prices and/or reduced availability of suppliers. Therefore, it is important to school boards that the market preferences (or monopolies) given to local distributors be limited to those absolutely necessary for them to meet their obligations, and no more. Even if, as is the case, school boards will normally rely on the local distributor despite the availability of an alternative bid option, the existence of a robust competitive market ensures that the prices charged by the distributor are kept as low as possible.

It is for this second reason that we have one comment on the proposed amendments. In our view, the proposed enlargement of the “planning and specifications” exemption may not be necessary.

We agree with the statement in the Proposal that distributors need to control the design and configuration of their system. We also understand that, while this right is something that could in theory be abused (to limit the activities of competitors), distributors must exercise that right in a reasonable way. If a distributor did abuse it, we believe that the Board would quickly step in and set them straight. Thus, we think it is reasonable to assume that any right of control given to distributors will be exercised fairly.

On the other hand, typically the process of building a work of the type that allows for the alternative bid option includes a planning and design phase, and the companies bidding on that work will often include that in the package. Our concern is that requiring the distributor to do the planning and design part of the project separately can result in delay and duplication of effort, and therefore increase the cost of proceeding with an alternative bid.

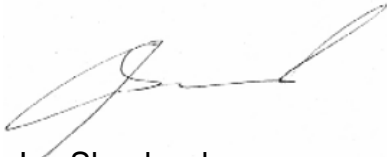
As a practical matter, we would expect that any distributor would as a matter of course work co-operatively with the engineers and planners of a customer or their contractor, to ensure that the work done through alternative bid is consistent with their system. This does not mean the distributor has to plan and design the expansion or other work.

Instead, it means a) there has to be ongoing communication during the planning phase, and b) the final design produced by the customer or their contractor has to be approved by the distributor. If these two criteria are met, the Board's policy objective is also met, but at potentially lower cost.

We therefore suggest that the DSC require distributor approval of the final design and specifications, but allow planning and design activities to be contestable.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested parties (email)