



NOTICE OF PROPOSAL TO AMEND A CODE
PROPOSED AMENDMENTS TO THE DISTRIBUTION SYSTEM CODE

BOARD FILE NO: EB-2010-0038

BY E-MAIL AND WEB POSTING

**To: All Licensed Electricity Distributors
All Other Interested Parties**

Date: March 10, 2010

The Ontario Energy Board (the "Board") is giving notice under section 70.2 of the *Ontario Energy Board Act, 1998* (the "Act") of proposed amendments to the Distribution System Code (the "Code").

I. Background and Purpose of the Proposed Amendments

Section 3 of the Code provides connecting customers with an alternative bid option under which the customer is entitled to use the services of a qualified contractor to perform certain work whenever the customer is required to pay a capital contribution in relation to the connection of its facilities. As a result of amendments made to the Code in October, 2009 (EB-2009-0077), a capital contribution may be required (and the alternative bid option therefore applies) in relation to the following:

- i. any "expansion" made to connect a customer that is a load or a non-renewable generation facility; and
- ii. in certain cases,¹ an "expansion" made to connect a renewable energy generation facility.

¹ A capital contribution cannot be required if the cost of the expansion is at or below the generator's

A distributor bears all of the costs associated with making a “renewable enabling improvement” and, as such, no capital contribution can be required and the alternative bid option would not apply.

Work that is eligible for the alternative bid option is currently referred to in the Code as “contestable”, and work that is ineligible is referred to as “uncontestable”. Section 3.2.15 of the Code identifies work that is uncontestable.

The Board is aware that there have been differences of opinion between distributors and their customers regarding the scope of work that is subject to alternative bid, and in particular in relation to the work that is identified as uncontestable under section 3.2.15 of the Code. The Board is therefore proposing amendments to the Code that will provide greater clarity regarding the application of the alternative bid provisions. The proposed amendments are described in section II below and set out in Attachment A.

II. Proposed Amendments to the Code

1. Nomenclature

The Board notes that the terms “contestability” and “contestable markets” each have a particular meaning in economic theory that is quite different from the meaning that attaches to the term “contestable” as used in the Code. While the Board does not believe that this distinction has given rise to any misinterpretation of the Code, the Board is taking this opportunity to eliminate the terms “contestable” and “uncontestable” from the Code. The Board is proposing instead to use the phrase “subject to alternative bid” or language of similar effect as the context may require. The sections of the Code affected by this proposal are: 3.2.2; 3.2.9(d); 3.2.10(b); 3.2.14; 3.2.15; 3.2.16 and 3.2.18.

2. Obligation to Transfer Work Done under Alternative Bid Option

The Board is proposing to include in the Code a requirement that the alternative bid option applies only where the expansion facilities will be transferred to the distributor

renewable energy expansion cost cap or if the expansion is in a Board-approved distribution system plan or is otherwise approved or mandated by the Board.

when completed. A customer that wishes to plan, design, construct and own its own distribution facilities may do so provided that all regulatory requirements (including licensing if applicable) are met. In that case, the customer would not use the expansion and alternative bid provisions of the Code. Where a customer chooses to use the expansion and alternative bid provisions of the Code, however, the Board believes that those facilities should be transferred to the distributor upon completion. The Board understands that this is already the practice for a number of larger distributors. The Board is proposing to amend section 3.2.14 of the Code accordingly.

3. *Scope of Alternative Bid Option*

Section 3.2.15 of the Code currently states that the following work is uncontestable:

- (a) the preliminary planning, design and engineering specifications of the work required for distribution system expansion and connection (specifications shall be made in accordance with the distributor's design and technical standards and specifications); and
- (b) work involving existing distributor assets.

Experience has demonstrated that the term "preliminary" and the phrase "involving existing distributor assets" are not sufficiently precise so as to avoid disagreements between distributors and their customers as to the scope of the alternative bid option.

a. Physical Contact with Existing System and De-energization

The Board remains of the view that any work that requires physical contact with the distributor's existing distribution system should be within the distributor's discretion. In other words, the distributor should have the authority in any given case to determine whether this work is or is not subject to alternative bid. The Board is proposing to amend the Code by adding a new section 3.2.15A accordingly.

The Board emphasizes that this proposed rule applies only to work that actually *requires* physical contact in the sense that the specific piece of work cannot be done without that contact. It does not apply to preclude the alternative bid option for other associated work that itself can be done without the need for such contact. Similarly, work that has the potential for incidental physical contact with the existing distribution

system is eligible for the alternative bid option. There are safety standards for electrical construction that adequately address these situations and the Board expects all relevant parties to continue to act in accordance with those safety standards.

Work on distribution systems occasionally requires the temporary de-energization of a part of the distribution system. The Board believes that responsibility and decision-making for temporary de-energizations should remain with the distributor, and that temporary de-energization be effected using the same protocols regardless of whether the expansion work is being done by the distributor or under the alternative bid option. The Board is proposing to amend the Code to add a new section 3.2.15B accordingly.

b. Design and Engineering Planning and Specifications

Distributors are accountable to their customers and to the Board for providing reliable service and for the efficient and rational planning of their distribution systems. In that context, and given the proposal above that facilities constructed under the alternative bid option be transferred to the distributor, the Board believes that planning and the development of specifications for the design, engineering and layout of expansions should be the responsibility of the distributor. Work done under the alternative bid option must conform to the distributor's design and engineering plans and specifications. The Board is therefore also proposing that the plans for such work be subject to review and approval by the distributor to ensure such conformance, at the customer's cost. The Board is proposing to amend sections 3.2.15, 3.2.16 and 3.2.17 of the Code accordingly.

III. Anticipated Costs and Benefits

The Board believes that the proposed amendments to the Code will provide greater clarity regarding the scope and application of the alternative bid provisions of the Code. This will, in turn, promote more effective dealings between distributors and their customers.

The Board does not anticipate that the proposed amendments will result in material additional costs being borne by distributors or ratepayers.

IV. Coming Into Force

The Board is proposing that the proposed amendments to the Code described above and set out in Attachment A to this Notice come into force on the date that the final amendments are published on the Board's website after having been made by the Board.

V. Cost Awards

Cost awards will be available under section 30 of the Act to eligible persons in relation to the provision of written comments on the proposed amendments to the Code as set out in Attachment A, **to a maximum of 10 hours**. Costs awarded will be recovered from all rate-regulated licensed electricity distributors based on their respective distribution revenues. Attachment B contains important information regarding cost awards for this notice and comment process, including in relation to eligibility requests and objections.

In order to facilitate a timely decision on cost eligibility, the deadlines for filing cost eligibility requests and objections will be strictly enforced.

VI. Invitation to Comment

All interested parties are invited to make written comments on the Board's proposed amendments to the Code set out in Attachment A by **April 1, 2010**.

Three (3) paper copies of each filing must be provided, and should be sent to:

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

The Board requests that interested parties make every effort to provide electronic copies of their filings in searchable/unrestricted Adobe Acrobat (PDF) format, and to submit their filings through the Board's web portal at www.errr.oeb.gov.on.ca. A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at www.oeb.gov.on.ca, and fill out a user ID password request. Additionally, interested parties are requested to follow the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the "e-filing services" webpage. If the Board's web portal is not available, electronic copies of filings may be filed by e-mail at boardsec@oeb.gov.on.ca.

Those that do not have internet access should provide a CD or diskette containing their filing in PDF format.

Filings to the Board must be received by the Board Secretary by **4:45 p.m.** on the required date. They must quote file number **EB-2010-0038** and include your name, address, telephone number and, where available, your e-mail address and fax number.

This Notice, including the attached proposed amendments to the Code, and all written comments received by the Board in response to this Notice, will be available for public viewing on the Board's web site at www.oeb.gov.on.ca and at the office of the Board during normal business hours.

If you have any questions regarding the proposed amendments to the Code described in this Notice and set out in Attachment A, please contact David Brown at 416-440-8123. The Board's toll free number is 1-888-632-6273.

DATED at Toronto, March 10, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Attachments:

Attachment A: Proposed Amendments to the Distribution System Code
Attachment B: Cost Awards

Attachment A

Proposed Amendments to the Distribution System Code

Note: The text of the proposed amendments is set out in italics below, for ease of identification only.

1. Section 3.2.2 of the Distribution System Code is amended by deleting the phrase “for the uncontestable work” in the second sentence and replacing it with the phrase “*for the work that was not subject to alternative bid*”.
2. Paragraph (d) of section 3.2.9 of the Distribution System Code is amended as follows:
 - i. by deleting the phrase “the contestable work” and replacing it with the phrase “*the work that is subject to alternative bid*”; and
 - ii. by deleting the phrase “the uncontestable work” and replacing it with the phrase “*the work that is not subject to alternative bid*”.
3. Paragraph (b) of section 3.2.10 of the Distribution System Code is amended by deleting the phrase “for the uncontestable work” and replacing it with the phrase “*for the work that is not subject to alternative bid*”.
4. Section 3.2.14 of the Distribution System Code is amended as follows:
 - i. by deleting the phrase “the contestable work” in the first and second sentences and replacing it in each case with the phrase “*the work that is subject to alternative bid*”; and
 - ii. by adding the following to the end of the first sentence of the section:

provided that the customer agrees to transfer the expansion facilities that are constructed under the alternative bid option to the distributor upon completion.
5. Section 3.2.15 of the Distribution System Code is deleted and replaced with the following:

3.2.15 Planning and the development of specifications for the design, engineering and layout of an expansion are not subject to alternative bid.

3.2.15A Work that requires physical contact with the distributor's existing distribution system is not subject to alternative bid unless the distributor decides in any given case to allow such work to be subject to alternative bid.

3.2.15B Despite any other provision of this Code, decisions related to the temporary de-energization of any portion of the distributor's existing distribution system are the sole responsibility of the distributor. Where the temporary de-energization is required in relation to work that is being done under alternative bid, the distributor shall apply the same protocols and procedures to the de-energization as it would if the customer had not selected the alternative bid option.

6. Section 3.2.16 of the Distribution System Code is amended as follows:

- i. by deleting the phrase "the contestable work" in the opening paragraph, in paragraph (a), in item (ii) of paragraph (b) and in paragraph (d), and replacing it in each case with the phrase "*the work that is subject to alternative bid*";
- ii. by deleting the phrase "design and technical standards and specifications" in paragraph (d) and replacing it with the phrase "*planning and the development of specifications for the design, engineering and layout of the expansion*";
- iii. by deleting the word "and" at the end of paragraph (d); and
- iv. by adding the following immediately after paragraph (d):

(d.1) require the customer to obtain the distributor's review and approval of the plans and specifications for the work that is subject to alternative bid to ensure conformance with the planning and specifications referred to in paragraph (d) prior to commencing that work; and

7. Section 3.2.17 of the Distribution System Code is amended by adding the following immediately after paragraph (a):

- (a.1) costs associated with any temporary de-energization of any portion of the existing distribution system that is required in relation to an expansion that is constructed under the alternative bid option;*
- (a.2) costs associated with the review and approval referred to in section 3.2.16(d.1);*

8. Section 3.2.18 of the Distribution System Code is amended by deleting the phrase “the contestable work” in the second and third sentences and replacing it in each case with the phrase “*the work that is subject to alternative bid*”.

Attachment B

Cost Awards

Cost Award Eligibility

The Board will determine eligibility for costs in accordance with its *Practice Direction on Cost Awards*. Any person requesting cost eligibility must file with the Board a written submission to that effect by **March 19, 2010**, identifying the nature of the person's interest in this process and the grounds on which the person believes that it is eligible for an award of costs (addressing the Board's cost eligibility criteria as set out in section 3 of the Board's *Practice Direction on Cost Awards*). An explanation of any other funding to which the person has access must also be provided, as should the name and credentials of any lawyer, analyst or consultant that the person intends to retain, if known. All requests for cost eligibility will be posted on the Board's website.

Licensed electricity distributors will be provided with an opportunity to object to any of the requests for cost award eligibility. If an electricity distributor has any objections to any of the requests for cost eligibility, such objections must be filed with the Board by **March 26, 2010**. Any objections will be posted on the Board's website. The Board will then make a final determination on the cost eligibility of the requesting parties.

Eligible Activities

Cost awards will be available in relation to the provision of comments on the proposed amendments to the Code as set out in Attachment A, to **a maximum of 10 hours**.

Cost Awards

When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of its *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied. The Board expects that groups representing the same interests or class of persons will make every effort to communicate and co-ordinate their participation in this process.

The Board will use the process set out in section 12 of its *Practice Direction on Cost Awards* to implement the payment of the cost awards. Therefore, the Board will act as a clearing house for all payments of cost awards in this process. For more information on this process, please see the Board's *Practice Direction on Cost Awards* and the October 27, 2005 letter regarding the rationale for the Board acting as a clearing house for the cost award payments. These documents can be found on the Board's website at www.oeb.gov.on.ca on the "Rules, Guidelines and Forms" webpage.