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**BY EMAIL AND WEB POSTING**

**February 14, 2019**

## **NOTICE OF AMENDMENT TO THE DISTRIBUTION SYSTEM CODE**

**BOARD FILE NO.: EB-2016-0003**

**To: All Licensed Electricity Distributors  
All Licensed Electricity Transmitters  
All Participants in Consultation Process EB-2013-0421  
All Other Interested Parties**

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The Ontario Energy Board (OEB) has issued an amendment to the Distribution System Code (DSC) pursuant to section 70.2 of the *Ontario Energy Board Act, 1998 (Act)*, as described in section B.

### **A. Background**

On December 18, 2018, the OEB issued a Notice of Amendments to the DSC and the Transmission System Code ([December 18<sup>th</sup> Notice](#)) aimed at ensuring the cost responsibility provisions for load customers in those Codes are aligned and facilitate the implementation of regional plans.

In the December 18<sup>th</sup> Notice, the OEB also issued a Supplemental Proposed Amendment to the DSC for comment. The purpose of the Supplemental Proposed Amendment was to amend section 3.2.4 of the DSC to bring it into alignment with section 3.6.1 which was issued as one of the final amendments described in the December 18<sup>th</sup> Notice and reflected the OEB's intent throughout this consultation process. That is, only large commercial and industrial (C&I) customers – with a peak demand that meets or exceeds 5 MW – would be required to pay a capital contribution where an investment involves an upstream transmission asset.

The issue that was identified involves a scenario where a distributor owns an upstream *transmission* asset that is deemed by the OEB to be a *distribution* asset pursuant to section 84 of the Act.<sup>1</sup> In such a scenario, the expansion would be treated as a distribution expansion under section 3.2.4, and residential subdivision developers would also be required to pay a capital contribution (even if their peak demand is less than 5 MW).

The OEB concluded that it would not be appropriate to have different cost responsibility rules for residential subdivision developers under the same Code depending solely on what type of utility owns the transmission asset as set out below:

- Distributor-owned (developer pays) under section 3.2.4
- Transmitter-owned (developer does not pay) under section 3.6.1

After considering two options to address this issue, the OEB proposed revising section 3.2.4 to exempt residential subdivision developers from paying a capital contribution where the distribution expansion is an upstream transmission asset that has been deemed to be a distribution asset. As identified in the December 18<sup>th</sup> Notice, the alternative approach – broadening section 3.6.1 to also apply to residential developers – would deviate from the OEB’s intent that only large C&I customers should pay, and the OEB anticipates that the residential subdivision developer may ultimately pass through most or all of the costs to residential consumers.

[Written comments](#) on the Supplemental Proposed Amendment were received from five participants involved in this consultation, which are all electricity distributors.

## **B. Adoption of Supplemental Proposed Amendment with Minor Revisions**

The comments received from stakeholders that focused on the substance of the Supplemental Proposed Amendment generally supported it, although it was suggested that there was a need for certain clarifications. Two stakeholders that provided comments did not address the Supplemental Proposed Amendment.

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<sup>1</sup> Section 84 of the Act provides that:

In making a decision in any proceeding under this Part or under the *Electricity Act, 1998*, the Board may determine that,

- (a) a system or part of a system that forms part of a transmission system is a distribution system or part of a distribution system; and
- (b) a system or part of a system that forms part of a distribution system is a transmission system or part of a transmission system.

The OEB has considered the comments received in relation to the Supplemental Proposed Amendment and has determined that no material changes are required. In light of the comments, however, the OEB has made minor revisions to better achieve the intent set out in the December 18<sup>th</sup> Notice as described below. The OEB is adopting the Supplemental Proposed Amendment with those revisions (Final Amendment). The Final Amendment to the DSC, as adopted by the OEB, is set out in Attachment A to this Notice.

### ***Revisions to the December Supplemental Proposed DSC Amendment***

As discussed above, two options were identified in the December 18<sup>th</sup> Notice and the OEB notes it was not suggested in any of the submissions that the alternative approach which was not proposed would be more appropriate.

It was suggested that the code language be revised to better reflect the OEB's intent as described in the December 18<sup>th</sup> Notice. The OEB agrees revisions to the wording are appropriate to clarify that the exemption from paying a capital contribution only applies where the upstream transmission asset is deemed to be a distribution asset. The OEB is of the view that also creating a new section 3.2.4A – rather than revising section 3.2.4 as initially proposed – will further increase clarity.

It was also suggested that the exemption should be broadened to include all customers with peak demand below 5 MW. The OEB notes that it expects residential subdivision developers will be affected the most by this exemption. That said, exempting all customers with non-coincident peak demand that is less than 5 MW would achieve full alignment with section 3.6.1. As noted in the December 18<sup>th</sup> Notice, *who owns* the asset should not be the determinant of *who pays*. With this revision, only customers with non-coincident peak demand that meets or exceeds 5 MW will pay whether the asset is owned by a distributor or a transmitter.

It was also suggested that the provision be further clarified to exempt “unforecasted” customers below the 5 MW threshold from having to make a capital contribution under section 3.2.27 of the DSC, where the connection is to a deemed distribution asset. That section requires an “unforecasted” customer, who connects to a distribution system during the five-year connection horizon, to make a capital contribution to the distributor, for the purpose of providing a rebate to the customer(s) who had initially contributed. The OEB is of the view that this clarification is appropriate. It would ensure that all

customers below the 5 MW threshold are treated equally, whether they are “unforecasted” or not; i.e., exempt from having to provide a capital contribution in relation to a deemed distribution asset.

## **2. *Anticipated Costs and Benefits***

The anticipated costs and benefits associated with the Supplemental Proposed Amendment to the DSC was set out in the December 18<sup>th</sup> Notice. Since the revisions reflected in the Final Amendment to the DSC are limited to clarifying revisions (i.e., no change in approach), interested parties should refer to the December 18<sup>th</sup> Notice for further information in that regard.

## **3. *Coming Into Force***

The Final Amendment to the DSC, as set out in Attachment A, will come into force on the date that the Final Amendment is published on the OEB’s website after having been made by the OEB.

This Notice, including the Final Amendment to the DSC set out in Attachments A (and all related written comments received by the OEB), will be available for public viewing on the OEB’s web site at [www.oeb.ca](http://www.oeb.ca) and at the OEB’s office during normal business hours.

If you have any questions regarding the Final Amendment to the DSC, as described in this Notice, please contact Chris Cincar at [Chris.Cincar@oeb.ca](mailto:Chris.Cincar@oeb.ca) or at 416-440-7696. The OEB’s toll free number is 1-888-632-6273.

**DATED** at Toronto, **February 14, 2019**

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

Attachment:

**Attachment A:** Final Amendment to the DSC

**Attachment A  
to  
Notice of Amendment to a Code**

**February 14, 2019**

**EB-2016-0003**

**Final Amendment to the  
Distribution System Code**

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

1. Section 3 of the DSC is amended by adding the following new section 3.2.4A after section 3.2.4:

*3.2.4A Where an expansion involves an upstream transmission asset that has been deemed by the Board to be a distribution asset pursuant to section 84 of the Act, a distributor shall not require a capital contribution under section 3.2.4 or section 3.2.27 from a load customer with a non-coincident peak demand of less than 5 MW.*