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BY EMAIL AND WEB POSTING

April 27, 2022

NOTICE OF PROPOSAL TO AMEND A CODE

**PROPOSED AMENDMENTS TO THE DISTRIBUTION SYSTEM CODE,
THE ELECTRICITY RETAILER CODE OF CONDUCT, AND
THE RETAIL SETTLEMENT CODE
TO FACILITATE CHANGES TO NET METERING**

OEB FILE NUMBER: EB-2022-0152

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

The Ontario Energy Board (OEB) is giving notice, under section 70.2 of the *Ontario Energy Board Act, 1998* (OEB Act), of a proposal to amend the following codes:

- Distribution System Code (DSC)
- Electricity Retailer Code of Conduct (ERCC)
- Retail Settlement Code (RSC)

The purpose of the proposed amendments is to ensure that the DSC, ERCC and RSC (collectively, the Codes) are consistent with, and facilitate the implementation of, legislative changes respecting net metering in Ontario.

A. Background

On April 20, 2022, the Province amended [O. Reg. 541/05](#) – (Net Metering) , made under the OEB Act, and [O. Reg. 389/10](#) – (General) made under the *Energy Consumer Protection Act, 2010* (ECPA) (respectively, the Net Metering Regulation and the ECPA Regulation).¹ The amendments, which come into force on July 1, 2022, enable third party ownership of net metered renewable energy generation facilities and retailing to consumers under these new net metering arrangements.

The Net Metering Regulation

The amendments to the Net Metering Regulation enable third parties to participate in certain types of net metering arrangements with consumers if they meet the criteria specified in the regulation. Briefly, third party generators are considered “eligible” if they own or operate renewable energy generation facilities connected on the customer side of the connection point with a distributor’s distribution system for the purpose of allowing the customer to be billed on a net metering basis. The Net Metering Regulation also makes provisions for a distribution customer who enters into a third party generation arrangement – referred to in the Net Metering Regulation as an “eligible customer” to enter into a power purchase agreement (PPA) with an “eligible third party generator”.

The amendments also require that where a distribution customer owns or operates a renewable energy generation facility and has an agreement in respect of the related equipment (e.g., a lease, financing or rental agreement etc.), other than a net metering agreement, a confirmation from the customer must be provided to the electricity distributor stating that the customer has received disclosure of certain prescribed information about the equipment-related agreement. .

The ECPA Regulation

The third party ownership model enabled by the amendments to the Net Metering Regulation provides for an electricity retail transaction using a retail contract such as a PPA. The amendments to the ECPA Regulation are intended to protect low volume consumers who enter into a retail contract such as a PPA with an eligible third party generator from unfair business practices and to enable those consumers to have information on which to base an informed decision.

¹ The Net Metering Regulation is amended by [O. Reg. 386/22 \(Net Metering\) made under the OEB Act](#). The ECPA Regulation is amended by [O. Reg. 387/22 \(General\) made under the ECPA](#).

While existing ECPA provisions apply to a retail contract such as a PPA (including the ban on door-to-door sales for residential consumers), they do not specifically address the related equipment contract, defined in the ECPA Regulation as the “associated agreement”.

The amendments to the ECPA Regulation introduce new provisions applicable to electricity retailers who enter into a retail contract such as a PPA and an associated agreement with a low volume consumer, including:

- Disclosure – The retailer will be required to include in the retail contract certain statements regarding any associated agreement, including that cancellation of the retail contract may give rise to penalties or other charges under the associated agreement.
- Unfair Practices – If certain disclosures concerning the terms and conditions of an associated agreement are not made to a customer (including insurance or warranty obligations, maintenance obligations, terms of payment, transfer rights, cancellation rights and fees, equipment removal costs and an estimate of the annual electricity cost savings), it will be an unfair practice under the ECPA.
- Cancellation - Cancellation of the retail contract, including if due to a customer move, will continue to be permitted. However, as noted above, if cancellation of the retail contract triggers penalties or other charges under an associated agreement, this information will be required to be disclosed to the customer.
- Return of Equipment - A customer who cancels a retail contract will not be automatically entitled to retain any associated equipment; and new disclosure requirements relate to the costs associated with returning this equipment.

B. Proposed Amendments to the Distribution System Code

In the light of the amendments to the Net Metering Regulation, the OEB proposes the following changes to the DSC:

1. General

Section 1.7 of the DSC will be amended to include the coming into force date of July 1, 2022 for the proposed amendments set out below.

2. Section 6.7 ‘Net Metering’

Section 6.7 sets out a distributor’s responsibilities in relation to the implementation of the Net Metering Regulation. Section 6.7.1 defines certain terms used for this

purpose. The OEB proposes to amend section 6.7.1 to accommodate the new category of distributor customer who will be eligible for net metering under the Net Metering Regulation.

The OEB proposes to add a new section 6.7.6 to address a distributor's responsibility in relation to ensuring that the eligibility requirement set out in section 7. (1)(f) of the Net Metering Regulation (i.e. confirmation that information about the associated agreement has been disclosed) is met using a form as may be approved by the OEB.

3. Appendix E to the DSC: *Form of Connection Agreement for a Small Embedded Generation Facility or a Mid-Sized Embedded Generation Facility*

The OEB proposes to amend the connection agreement forms in order to recognize that a customer may or may not own the generation facility that the customer is applying to connect.

The proposed amendments to the DSC are set out in Appendix A.

C. Proposed Amendments to the Electricity Retailer Code of Conduct

The changes to the ECPA Regulation and the Net Metering Regulation described above will require amendments to the ERCC to facilitate new third party net metering arrangements and certain additional obligations placed on retailers who retail to low volume consumers in respect of retail contracts for which there is an associated agreement.

Currently, the ERCC limits the term of a retail contract to 5 years. The OEB understands that PPAs in relation to net metering are likely to have a longer term tied to the life of the equipment. The OEB is therefore proposing to remove the contract term limit for retail contracts for which there is an associated agreement.

The OEB is also proposing to amend the ERCC to require that retailers who retail to low volume consumers in respect of retail contracts for which there is an associated agreement provide information relating to the associated agreement, and to implement new training requirements for salespersons and verification representatives. Section 1.10 of the ERCC would also be amended to identify that the above amendments come into force on July 1, 2022.

The proposed amendments to the ERCC are set out in Appendix B.

Several elements of the OEB's regulatory framework for electricity retailers will also need to be adapted to suit this new retailing activity, including the tip sheet, standard

contract terms and conditions, disclosure statements, price comparisons, and verification scripts. The OEB plans to circulate proposed revised versions of these consumer-facing materials for stakeholder feedback in the near future.

D. Proposed Amendments to the Retail Settlement Code

Under the amendments to the Net Metering Regulation, an eligible third party generator generates electricity on the eligible customer's side of the connection point with the distributor. Therefore, when billing the customer, the distributor will not include the cost of the electricity supplied under the retail contract, unlike the situation in other retail electricity arrangements.

The OEB therefore proposes to amend the RSC, effective July 1, 2022, to confirm that a distributor has no obligations to a retailer who is an eligible third party generator.

The proposed amendments to the RSC are further set out in Appendix C.

E. Anticipated Costs and Benefits

The OEB believes that the proposed amendments to the Codes are necessary to facilitate the implementation of changes made to the Net Metering Regulation and to the ECPA Regulation. The OEB believes that any related costs incurred by electricity distributors and retailers will not be material.

F. Coming into Force

The OEB proposes that the proposed amendments to the Codes, as detailed in Appendices A, B and C, come into force on July 1, 2022.

G. Invitation to Comment

The OEB invites comments from any interested stakeholder on the proposed amendments. Anyone interested in providing written comments on the proposed amendments to the DSC (as set out Appendix A), the ERCC (as set out in Appendix B), and/or the RSC (as set out in Appendix C) is invited to submit them by **May 11, 2022**. Your written comments must be received by the Registrar by **4:45 p.m.** on that date.

How to File Materials

Stakeholders are responsible for ensuring that any documents they file with the OEB **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2022-0152** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and email address
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [Filing Systems page](#) on the OEB's website
- Stakeholders are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 4:45 p.m., on the required date.

This Notice, including the amendments to the Codes proposed in Appendix A, B and C, and all related written comments received by the OEB will be available for public viewing on the [OEB's web site](#).

If you have any questions regarding the proposed amendments to the Codes, as described in this Notice, please contact Eamon O'Riordan at Eamon.ORiordan@oeb.ca. The OEB's toll-free number is 1-877-632-2727.

DATED at Toronto, April 27, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

Attachments:

Appendix A - Proposed Amendments to the Distribution System Code

Appendix B - Proposed Amendments to the Electricity Retailer Code of Conduct

Appendix C - Proposed Amendments to the Retailer Settlement Code

Appendix A

To Notice of Proposal Dated April 27, 2022

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 1.7 of the Distribution System Code is amended by adding the following text at the end of the section:

The amendments to section 6.7.1 and 6.7.6, and the amendments to Appendix E made by the Board on [insert date] come into force on July 1, 2022.

2. The definition of “eligible generator” in section 6.7.1 of the Distribution System Code is amended by striking out the words: “criteria set out in section 7(1) of the Net Metering Regulation” and replacing them with “definition of “eligible customer” or “eligible generator” as set out in section 1 of the Net Metering Regulation”, so the definition reads:

- *“eligible generator” in respect of a distributor means a customer of a distributor that meets the definition of “eligible customer” or “eligible generator” as set out in section 1 of the Net Metering Regulation;*

3. Subsection 6.7.6 of the Distribution System Code is inserted after subsection 6.7.5 as follows:

6.7.6 A confirmation provided to a distributor for the purposes of section 7. (1)(f) of the Net Metering Regulation shall be in such form as may be approved by the Board.

4. The text in section 6.1(i) of the “Form of Connection Agreement for a Small Embedded Generation Facility or a Mid-Sized Embedded Generation Facility” in Appendix E to the Distribution System Code, is deleted and replaced with the following text:

all permits, licences and other authorizations necessary to enable the ownership and operation of the Facility have been obtained; and

5. Section 13.3 of the “Form of Connection Agreement for a Small Embedded Generation Facility or a Mid-Sized Embedded Generation Facility” in Appendix E to

the Distribution System Code is amended by deleting the words “owned by the Customer”.

6. Section 14.3 of the “Form of Connection Agreement for a Small Embedded Generation Facility or a Mid-Sized Embedded Generation Facility” in Appendix E to the Distribution System Code is amended by replacing the word “own” with the word “respective”.

Appendix B

To Notice of Proposal Dated April 27, 2022

Proposed Amendments to the Electricity Retailer Code of Conduct

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

1. Section 1.2 in Part A of the Electricity Retailer Code of Conduct is amended by adding the following definitions:

“associated agreement” has the meaning given to it in section 2 of the ECPA Regulation;

2. Section 1.10 in Part A of the Electricity Retailer Code of Conduct is amended by adding the following new section 1.10.6:

1.10.6 The amendments to this Code made by the OEB on [insert date] come into force on July 1, 2022.

3. Section 1 in Part B of the Electricity Retailer Code of Conduct is amended by adding the following new section after section 1.2:

1.3 If retailing to a low volume consumer in respect of a retail contract for which there is an associated agreement, the retailer shall also:

(a) accurately and completely describe the proposed transaction in its marketing and promotional materials and shall not include any promise or suggestion of a benefit or financial advantage that is not otherwise included in the contractual terms and conditions of the associated agreement;

(b) in disclosing the estimated annual electricity cost savings to the consumer under the associated agreement, ensure the estimate is:

(i) provided for the length of the associated agreement; and

(ii) clearly identified as an estimate and subject to change; and

(c) not be required to comply with section 3.2 of the Code.

4. Section 5.2 (b) of the Electricity Retailer Code of Conduct is amended by adding the following new item after item (xiii):

(xiii.a) if retailing in respect of a contract for which there is an associated agreement, how net metering works under Ontario Regulation 541/05 (Net Metering), and including the disclosure obligations under Ontario Regulation 389/10 (General) that pertain to a consumer who enters into a contract for which there is an associated agreement;

5. Section 5.3 (b) of the Electricity Retailer Code of Conduct is amended by adding the following new item after item (ix):

(ix.a) if retailing in respect a contract for which there is an associated agreement, how net metering works in under Ontario Regulation 541/05 (Net Metering), including the disclosure obligations under Ontario Regulation 389/10 (General) that pertain to a consumer who enters into a contract for which there is an associated agreement;

6. Section 5.4 (b) of the Electricity Retailer Code of Conduct is amended by adding the following new item after item (xi):

(xi.a) if retailing in respect of a contract for which there is an associated agreement, how net metering works under Ontario Regulation 541/05 (Net Metering), including the disclosure obligations under Ontario Regulation 389/10 (General) that pertain to a consumer who enters into a contract for which there is an associated agreement;

Appendix C

To Notice of Proposal Dated April 27, 2022

Proposed Amendments to the Retail Settlement Code

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

1. Section 1.4 of the Retail Settlement Code is amended by adding the section number “1.4.1” immediately before the first paragraph, and adding the following text at the end of the section:

1.4.2

Notwithstanding section 1.4.1, nothing in this Code shall be interpreted as imposing any obligation on a distributor to provide billing services in relation to, or otherwise facilitate or support an arrangement, between a consumer and retailer under section 7.1 of Ontario Regulation 541/05 (Net Metering), except as expressly provided for in that Regulation.

2. Section 1.7 of the Retail Settlement Code is amended by adding the following text at the end of the section:

Section 1.4.2 made by the Board on [insert date] comes into force on July 1, 2022.