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BY COURIER

April 1, 2010

Ms. Kirsten Walli
Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON
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Dear Ms. Walli:

EB-2010-0038 – OEB Proposed Amendments to the Distribution System Code: The Alternative Bid Option - Hydro One Networks Inc. Comment

As requested in the Board's Notice of Proposal of March 10, 2010, Hydro One Networks Inc. ("Hydro One") is pleased to offer comments on the Board's proposed amendments to the Distribution System Code ("The Code" or "DSC") pertaining to "the alternative bid option".

Hydro One confirms the Board's observation that there have been differences of opinion between distributors and their customers (and also with the parties in the electrical contractor community) regarding the scope of work that is subject to alternative bid, and in relation to the work identified as uncontestable under section 3.2.15 of the DSC. Hydro One's experience is that while the current wording in the DSC had not caused much confusion for load customers and their contractors, there has been more uncertainty recently as the industry deals with the increased level of activity to connect renewable energy generators.

Hydro One therefore welcomes the Board's effort to provide greater clarity regarding the application of the alternative bid provisions. The various initiatives created by the *Green Energy and Green Economy Act* will establish a challenging work program for distributors, for generation project proponents and for electrical contractors. Hydro One believes that that all stakeholders will benefit from a better understanding of the rules that apply to the various components of that work, and that the benefit will manifest itself in more effective and efficient delivery by all parties concerned.

Hydro One's specific interests in this matter

In working with the existing DSC rules for expansion and contestable work, Hydro One has identified four items that would benefit from clarification:

- What work, during the construction phase of a project, is actually contestable?
- What pre-construction work (e.g. planning, design, specification, etc) is contestable?
- Is there 'contestability' for non-expansion work under the DSC?
- Who is the ultimate owner of assets that are constructed under the alternative bid option?

Hydro One is pleased that the Board's proposed amendments attempt to address all of these concerns. Hydro One applied three main criteria in assessing the proposed amendments, and in preparing our comments and suggestions:

- Do the amendments achieve clarity for all parties that would eliminate confusion and possible disputes in the field?
- Do they give distributors the necessary rights and authorities so that they can meet their licence obligations and maintain a safe and reliable system?
- To the extent possible, do they help ensure a safe, efficient and effective means of planning and executing work?

Hydro One's comments are organized according the Notice of Proposed Amendments, in three main sections as follows:

1. Nomenclature

Hydro One has no major concerns with the Board's proposed elimination of the terms "contestable" and "uncontestable" from the DSC, and is agreeable to the use of "subject to alternative bid" or similar language.

Hydro One agrees that the existing terms have not been the source of misinterpretations of the DSC. Rather, some of the decision rules surrounding "contestability" have proven problematic.

As the Board is aware, "contestability" and related terms are found throughout the Transmission System Code (mostly Section 6.6) and in transmitters' Board-approved Transmission Connection Procedures. Hydro One would welcome the use of consistent language across the entire regulatory landscape, wherever possible.

The Board is proposing to use the phrase "subject to alternative bid" or similar language. Hydro One notes, for the Board's information, that the use of this term could be interpreted as requiring the customer to actually tender the work for competitive 'bids', which is not the intent. Customers could, of course, select any qualified contractor, without 'bids'.

2. Obligation to Transfer Work Done under Alternative Bid Option

Hydro One welcomes the proposed amendment that would require a customer who chooses to use the expansion and alternative bid provisions of the DSC to transfer the expansion facilities to the distributor upon completion. Hydro One's existing policy is consistent with this requirement.

The benefits of this requirement include the following:

- Potential to accommodate the connection of future customers who “lie along” the expansion assets;
- Consistency with other regulatory requirements pertaining to distribution service areas and licensing, among others;
- More efficient and less duplicative development of distribution infrastructure; and
- A more acceptable situation for municipal authorities who have an interest in the managed use of road allowance by electrical infrastructure;
- Improved planning of the distribution system and elimination of the need for parties to negotiate and consummate commercial asset transfers “after the fact” on a reactive basis.
- Flexibility to deal with situations where private ownership of assets is a more appropriate solution.

Simply put, the proposed amendments would largely eliminate many issues that would be created by having numerous private owners of lines on public roadways, including licensing, future connections to those assets, possible asset transfers, and operating protocols.

Hydro One expect that this amendment will result in distributors owning all new lines built on road allowance as expansions to the distribution system. Where the distributor does not foresee any use of a line on road allowance to serve other customers as part of the distribution system, the asset would not be deemed an “expansion”.

3. Scope of Alternative Bid Option

Recognition of different types of work

The proposed amendments apply to Section 3.2 of the DSC, which deals with Expansions. As such, Hydro One assumes, and seeks the Board’s confirmation that, the “alternative bid option” only applies to expansions.

Hydro One’s experience has been that there is confusion regarding the following three areas, not all of which are pure “expansions”.

- Expansion work that is ‘greenfield’ -- e.g. new poles and lines where there are no existing assets today;
- Expansion work that involves modification to and/or replacement of existing assets – e.g. adding a 3-phase circuit to a line with a single-phase circuit;
- Modification or replacement of existing assets to accommodate joint use occupancy for the circuits or telecom assets of a customer or a third party, where that other party will own the occupying circuits/assets.

Put more simply, these situations can be categorized, respectively, as

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| <ul style="list-style-type: none"> • Pure Expansion • Combination of Replacement and Expansion, and • Asset Modification/Replacement |
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The latter two categories have seen the most confusion regarding “contestability”.

The rules for each of these three categories need to be somehow addressed in the Code.

a. Physical Contact with Existing System and De-energization

Hydro One identifies the following issues with the “physical contact” rule in the proposed amendments:

“Physical Contact” is a poor delineator: It focuses on work method, not the substance of the work

As a principle, Hydro One’s view is that the criteria for determining ‘contestability’ should be based on the purpose of the work being performed. They should not be based on the means by which work is performed. I.e., they should be based on “Why”, not on “How” work is done.

Criteria that are grounded in “how” work is done can be manipulated and can drive wrong business decisions (e.g. looking for suboptimal solutions, just to avoid ‘physical contact’).

What is physical contact?

The definition of physical contact in the proposed amendments is ambiguous, as it does not recognize many types of activities such as

- Installing “cover-ups” on existing circuits
- Transferring of distributor’s existing distribution assets to a new location
- Work with a high likelihood of incidental contact (more than the potential for...)
- Termination to existing system
- Climbing on existing distribution poles (with and without a Joint Use agreement)

Can work under Alternative Bid be severed and fragmented?

Another problem with the ‘physical contact’ rule is that the proposed amendments suggest that “*Work that requires physical contact with the distributor’s existing distribution system is not subject to alternative bid...*”

Is the Code asserting that if the work requires any physical contact with existing assets, the whole project is not subject to alternative bid?

Or is the Code suggesting that those aspects of the project that do not require contact be done as alternative bid, while the distributor performs the other aspects? Section 6.6.2 of the TSC does not allow contestable work to be broken up (“...*where the load customer chooses to carry out the contestable work, it must carry out all of the contestable work*”). Requiring the distributor to break up the work into segments, based on “physical contact”, can lead to duplicate work forces on the same site and more scheduling and coordination problems that ultimately add to the cost of the work.

A Different Approach: Focusing on the substance of the work, not on “physical contact”

Hydro One suggests the following alternative criteria:

- Any work that is intended to replace or modify EXISTING assets, should not be ‘contestable’.
- Any work that is intended to *only* add new infrastructure, may be contestable.

- Any work that is intended to achieve a combination of both, therefore, should not be contestable.

This is a clear delineation that asserts the distributor’s unequivocal right to fully control the entire lifecycle and use of its portfolio of existing assets. Further, it eliminates confusion about who does work where new and existing assets may be “enmeshed” or intermingled with each other.

Under this definition, the following work is contestable:

- Expansion work that is ‘greenfield’ -- e.g. new poles and lines where there are no existing assets

The following work is not contestable:

- Expansion work that involves modification to existing assets – e.g., adding a 3-phase circuit to a line with a single-phase circuit
- Expansion work that involves removing an existing pole line and replacing it with another pole line, IF any of the existing circuits are being transferred to the new poles or replaced on a like-for-like basis by new circuits that perform the same function. Because this work includes a replacement of assets, it would not be contestable even if there is a NEW circuit being added to the same pole line, and even if the pole line is being moved to a new location where there were previously no existing distribution assets. This work does not “*only add*” new infrastructure.
- Modification or replacement of existing assets to accommodate joint use occupancy by the circuits or telecom assets of a customer or third party, where that other party will own the occupying circuits/assets. Because this involves modification or replacement of existing assets, this work would not be contestable even if there are new taller poles being built to accommodate the joint use, and even if the pole line is being moved to a new location where there were previously no existing distribution assets. This work does not “*only add*” new infrastructure; this work actually replaces infrastructure.

Using the simple categories identified above, the rules lead to

Pure Expansion	Contestable,
Combination of Replacement and Expansion	Not contestable
Asset Modification/ Replacement	Not contestable

Rationale: Distributors need to have accountability to manage their assets

The accountability for work that entails replacement or modification of existing lines (e.g., a single phase expansion to 3-phase circuit) must rest with the distributor. Its design and field construction cannot not be subject to alternative bid, as they affect the existing distribution customers (e.g. duration of outages) and also could impinge on third parties with whom the distributor has existing agreements. In many cases, these agreements dictate who owns the poles and who has the right to design and work in the vicinity of the third party’s assets. In addition to the routine design and the management of existing rights and contracts, work on existing assets requires administration (e.g., notifying parties that new line is to be built, having site meetings to jointly stake, notification that the pole changes have occurred, notice to relocate to the new poles and of course the removal of the existing old pole, filling in the hole and recycling the old pole butt (environmental laws). Thus, for existing lines, distributors require the right to perform all of these activities.

For ‘greenfield’ work, assets can be installed and then being turned over to the distributor, which makes the alternative bid workable as long as the distributor’s design is respected.

Non-expansion Work

Hydro One notes that the exclusion of “non expansion” work from the proposed amendments confirms that such work is *not* subject to the “alternative bid option”. Hydro One respectfully suggests that the Board may wish to recognize the existence of this type of work and explicitly exclude it from the alternative bid option.

Drivers for such non-expansion work include privately-owned ‘collector systems’ for certain generation facilities, and circuits that are used by transmission-connected generators (“downstream” of the connection point). In many cases, these privately-held assets benefit from joint use occupancy on distributors’ pole lines. This often requires modification or replacement of existing distribution assets to accommodate the joint use occupancy by the electrical circuits or telecom assets of a customer or third party. Because this work does not involve expansion of the distribution system, but does require modification or replacement of existing assets, it would not be contestable even if new, taller poles must be built to accommodate the joint use, and even if the pole line is moved to a new location where there were previously no existing distribution assets. This work simply replaces infrastructure.

Joint Use of Poles for Expansion Work

Distributors sometimes negotiate “contracts of convenience” with third parties (e.g. telephone companies) that involve the use of those parties’ poles. These arrangements are mutually beneficial and generally lead to shared infrastructure, in turn reducing costs for all parties and their ratepayers.

The Code needs to recognize that the provisions of Section 3.2 does not extend to such parties and contracts. While third parties may have obligations through contracts and arrangements with the distributor, they are not necessarily obliged to accommodate other parties. Similarly, distributors may have contractual obligations to those third parties, that apply to existing distribution assets, and would likely prevent distributors from implementing new DSC rules that affect those assets.

Hence the Alternative Bid Option cannot apply in cases where existing or new third party agreements are involved.

b. Design and Engineering Planning and Specifications

Hydro One recognizes the Board’s desire to concisely articulate the type of pre-construction activities that are and are not eligible for alternative bid. While brevity is a desirable objective, it may come at the expense of clarity, which Hydro One believes is more critical.

The words used in the proposed DSC amendments, such as “planning” and “the development of specifications for the design, engineering and layout of an expansion”, are not clearly defined. Further, their listing in sentence structure and their separation by commas, conjunctions or neither, leads to differing interpretations of “what modifies what? (*“Planning and the development of specifications for the design, engineering and layout of an expansion are not subject to alternative bid”*)”. This is the same problem that existed in the current DSC wording.

The terms “plans” and “planning” are used twice, even in the same clause [s 3.2.16 (iv) (d.1)] and clearly are intended to have different meanings, but their meanings are unclear.

For this reason, the Code would benefit from definition of, and elaboration on the words used in the proposed amendment. The terms in the DSC should be provided in bullet form, listing unambiguously and with as much detail as possible the activities that would and would not be contestable in the pre-construction phase, with definitions.

Hydro One respectfully recommends for the Board’s consideration, the following list of activities. These activities cover, in chronological order, the distributor’s standards and specifications, project-specific planning and design, work execution planning, actual work execution, and then the preparation of the assets for service. Hydro One’s interpretation of the proposed rules for alternative bid is also respectfully included in these descriptions.

The one area that is perhaps most contentious in the pre-construction phase is the “Field Layout and Design”, which Hydro One believes is not eligible for alternative bid. Hydro One’s view is that this work must be the distributor’s accountability as it ultimately dictates not only where the line will be located but also the extent to which it can meet the distributor’s expectation of use in the longer term. Further, the layout and design must take into consideration the integration of the expansion with the existing assets, which are already part of the distribution system. In cases where the expansion involves both existing and ‘greenfield’ assets, it may be possible to subdivide the actual work, but the planning must be performed in an integrated fashion. Failure to do so would only result in duplication and higher costs at best, and in a suboptimal design in the worst case.

Thus, expansion projects can be viewed to consist of the following sequential stages, with the noted eligibility for alternative bid.

Development of engineering standards and specifications for the following is not eligible for alternative bid:

- Materials used
- Depth Setting
- Framing (Type of Framing)
- Pole Spacing
- Pole Height
- Pole Class
- Conductor Weights + Tensions
- Maximum Conductor Sags
- Number of Circuits
- Joint Use Capability
- Anchor Lead Distances and Holding Weights

Pre-construction Work

1. Field Layout and Design is not eligible for Alternative Bid

- System Planning
- Design of pole line and its configuration
- Final Connection between existing and new assets

- Materials Procurement Planning
 - Staking in accordance with the design
 - Planning of Corners (location of anchors)
 - Permits and Approvals where required, e.g.,
 - Easements
 - Tree-cutting Rights
 - Road Approval, Water-crossing, Railway-crossing
 - Planning and coordination with third parties (e.g., telecom companies, joint use occupants, and pole owners)
 - Pole Height and Class
 - Pole Framing
 - Wire Specs and Size
2. **Work Execution Planning is eligible for alternative bid only for ‘greenfield’ expansions and subject to distributors review and approval per proposed 3.2.16 iv (d.1); It is not eligible for alternative bid for work entailing replacement/ modification of existing assets**
- Work Assignment and Allocation (i.e., “Who is doing work”)
 - Ordering Materials in accordance with design and specs
 - Work equipment verification, scheduling and mobilization
 - Workforce planning
 - Timeline Setting and schedules including coordinating outages and connections
3. **Materials management (in accordance with design and specs) is eligible for alternative bid for ‘greenfield’ only; it is not eligible for alternative bid for work entailing replacement/ modification of existing assets**
- Frames and Raw Materials
 - Preparation of Bill of Materials
 - Procurement
 - Delivery

Field Construction is eligible for alternative bid for ‘greenfield’ only; it is not eligible for alternative bid for work entailing replacement/ modification of existing assets

Commissioning is not eligible for alternative bid

Ownership Transfer, where applicable is not eligible for alternative bid

- For expansion work performed under alternative bid;
- Pole Ownership may not be transferred to the distributor where pole sharing contracts of convenience are governed by a commercial agreement (i.e., out of scope of alternative bid)

Energization, like de-energization during the project, is not eligible for alternative bid

Administration is not eligible for alternative bid

Conclusion

Hydro One acknowledges the Board's efforts in addressing this matter and recognizes that the suggestions included in our submission may delay the final amendments to the DSC. Our suggestions are intended to introduce clarity in an area where there has been confusion, especially because distributors expect that these sections of the DSC will apply to a larger volume of work in the coming months and years.

Distributors, other utilities, customers and contractors were able to abide by the existing rules in the DSC for newly-connected load customers. However, the growth in system expansions for distribution-connected generation, and the development of private collector lines for transmission- and distribution-connected generator have led to the lines of accountability becoming blurred.

Hydro One believes that clarity in the Distribution System Code and the use by distributors of appropriate joint use agreements will resolve these problems, allowing generator connections to benefit from existing infrastructure and setting out a template for future connections. We believe that the policies that Hydro One has in place have served us well for the past decade and only need clarification to accommodate the changing customer requirements going forward.

Sincerely,

ORIGINAL SIGNED BY SUSAN FRANK

Susan Frank

Attached



Stages of Expansion Work

(shaded areas denote alternative bid eligibility)

Specs. Development (Distributor Standard)

Pre-Construction Work

Field Layout/Design

Work Execution Planning

Materials (in accordance with design and specs)

Field Construction Work

Alternative Bid - Greenfield Only (Customer's Work)

Distributor's Approval Required

Commissioning

Ownership Transfer

Energization

Administration

