

November 7, 2007

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

Re: EB 2007-0797

Further to Procedural Order No. 1 the IESO is writing to provide a summary of the submissions which it intends to make at the hearing of the four preliminary matters on Friday November 9, 2007 in relation to:

1. waiving the deadline for filing the notice of motion;
2. the threshold question under Rule 45.01 of whether to conduct a review;
3. whether to stay the implementation and effects of the decision pending completion of the requested review; and
4. whether to extend the deadline for filing connection procedures concerning matters affected by the requested review.

The IESO adopts and supports the submissions of Hydro One that a review of Section 3.5 which addresses Transmission Plans and Cost Responsibility for Connection Facilities is required to ensure that the interest of consumers in relation to the reliable operation of the IESO controlled grid is protected.

An unintended consequence of the Cost Responsibility section of the Decision is uncertainty regarding responsibility for costs including the quantum of any such responsibility. The significance of customer certainty regarding costs is acknowledged at page 27 of the Decision in concluding that the two Leave to Construct applications then before other panels should not now require a customer contribution. "The customer had a right to know at the time of its engagement the full extent of its financial responsibility." The method used to determine cost responsibility must not impede the efficient and timely study, planning, approval and implementation of transmission projects required for system reliability.

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The balance of the IESO's comments, as set out below, detail the IESO's support of Hydro One's request for a review of section 3.3 of the Connection Procedures Decision regarding Contestability – Competition for Customer-Owned Connection Assets.

1. Request to Extend Deadline

Rule 42.03 of the Board's Rules of Practice and Procedure ("Rules") require a party to bring a motion for review of an order or decision within 20 days of the date of the order or decision. While finality and timeliness are commendable objectives, the Board has acknowledged in the Rules that there are cases in which it is appropriate to dispense with, amend, vary or supplement a Rule where required by the circumstances of the case or where it is in the public interest to do so (Rule 1.03). In a similar manner the Rules also provide that they shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits (Rule 2.01). It is expressly contemplated that the Board may extend a time limit where appropriate to do so (Rule 7.01).

The IESO supports the submission of Hydro One that it required a reasonable period of time to assess the significance and scope of the Decision and the options available, particularly in relation to the Contestability Issue. Hydro One noted in its submissions the need to consult with customers regarding the implications of the Decision for customers. The IESO submits that it is preferable to, on occasion, extend the timeline for the submission of a motion for review rather than require the unnecessary, albeit timely, filing of requests for review to preserve the right to request such a review.

2. The Threshold Question (Rule 45.01)

Hydro One has asserted as a ground for review that the evidence and information before the panel in the proceeding was incomplete and could not have been discovered by reasonable diligence at the time. The IESO supports the submission that the evidentiary record is incomplete and that this information could not have been discovered by reasonable diligence at the time in relation to section 3.3 of the Decision. The Notice of Application and related Procedural Orders did not identify that the Board was contemplating a substantive change in the interpretation of s. 71 (1) of the Ontario Energy Board Act (OEB Act).

The substantive positions of Board Staff and of the Electrical Contractors Association of Ontario (ECAO) on contestability were only made known on the last day for submissions to the Board on the issue of connection procedures, January 26, 2007. Though the Board subsequently extended the deadline for the submission of comments on the interpretation and application of Section 6.3 of the TSC regarding cost responsibility based on the potential significance of that section for connecting customers, it did not extend the time for submissions on contestability.

As a result the record is incomplete and does not address:

- the breadth and scope of the services provided by Hydro One;
- the impact of the prohibition on customers of Hydro One including impact on current work schedules; on-going projects; future projects; ability to comply with market rules; and compliance with reliability requirements;
- the availability of alternative suppliers with requisite expertise and resources to provide services in a timely manner;
- the cost implications on consumers of the change in interpretation; and
- whether customer owned transmission facilities are, in fact, integral to the business activity of transmitting electricity.

Section 56 of the OEB Act provides a definition of what it means to transmit electricity; it is defined in relation to the voltage of the electricity being conveyed – above 50 kilovolts – and is not defined by the ownership of the structures, equipment or other things used for the purpose of transmitting it. As such it is respectfully submitted that the Board erred in concluding that ownership is “a critical distinction” in determining whether the construction of transmission connection facilities is an integral component of the transmission of electricity. Consistent with this proposition, the focus of reliability standards and the market rules is on the integrated operation of the transmission of electricity at voltages above 50 kilovolts and not the ownership of elements of that system.

It is submitted that the identified limitations of the record and the error in the interpretation of section 71 of the OEB Act are, as noted above, identifiable. They are also clearly material and relevant to the determination of the proper interpretation of section 71 of the OEB Act and the scope of services which Hydro One may provide. The findings of the panel in relation to contestability in the Connection Procedures Decision represent a material change in interpretation of section 71 without the benefit of a complete record and are inconsistent with the definitions as set out in the OEB Act.

Previously in considering the interpretation of section 71 in RP-1999-0044 the Board was alert to and specifically considered the practical consequences of the issue. It concluded that “it would be premature to consider directing OHNC to exit the connection construction market until the Board has evidence before it on the competitiveness of that market.” The evidentiary record on this issue was incomplete and did not receive the scrutiny that would be associated with a transparent review of the change in interpretation. For example, the ECAO filing was made on the last day permitted by the Board’s Procedural Order, notwithstanding the fact that the affidavits submitted were sworn some six weeks earlier, and was not subjected to IR’s or oral questioning. Moreover, the recent letters of Ontario Power Generation (OPG) and Bruce Power

are indicative of the additional evidence that would assist the Board in determining the practical implications of its interpretation of section 71.

3. The Stay

In its capacity as the independent system operator, the Ontario reliability standards authority and market operator, the IESO submits that the Decision should be reviewed. The IESO is also supportive of the requested stay of the implementation of the Decision pending completion of the requested review. It is submitted that the merits of the Motion to review and the possibility of irreparable harm have been substantiated by, inter alia, the submissions of Hydro One, OPG, and Bruce Power.

The IESO is supportive of the continuation of the status quo pending the completion of the requested review. Any decision which may impact on the ability of market participants to schedule and complete all necessary work to build and maintain transmission connections, including full compliance with all reliability standards and market rules, requires due consideration. Any transition to a new interpretation which has practical consequences on the operation of the transmission system must be managed in an orderly manner. The two largest generators in Ontario, OPG and Bruce Power, have stated that the immediate implementation of the Decision will have a significant adverse impact on their operations and by implication on the transmission system. These public interest considerations, which extend beyond Ontario to our interconnected neighbours, weigh heavily in favour of granting the pending Board review of the Decision.

4. Extending the Deadline for Filing Revised Connection Procedures

There are no regulatory efficiencies to be gained from requiring Hydro One, as well as stakeholders who would need to comment on such procedures, to expend resources on the preparation of revised connection procedures pending the completion of the requested review. Moreover, the nature of the concerns identified by customers of Hydro One indicates the need to consider the impact on those customers – which are likely to be elaborated on in the course of the review - in developing appropriate procedures.

All of which is respectfully submitted,

Yours truly,



John M. Rattray

CC: Interveners