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November 1, 2007

VIA SAME DAY COURIER

Ms. Kirsten Walli
Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: EB-2007-0797 - Hydro One Networks Inc. Connection Procedures Pursuant to the Transmission System Code – Hydro One Networks Inc.’s Submissions for Its Notice of Motion to Review the OEB’s Decision and Order Dated September 6, 2007

Pursuant to Procedural Order No. 1 in the above-noted proceeding, enclosed is a summary of the submissions of Hydro One Networks Inc. (“Hydro One”).

In addition to this submission, Hydro One intends to provide legal argument at the Motion on November 9, 2007. However, if the Board wishes to receive the submissions in the form of an affidavit or wishes to hear witnesses on November 9, 2007 to provide sworn evidence on the preliminary matters to be dealt with on that day, please inform us and we will be prepared to do so.

Yours very truly,

ORIGINAL SIGNED BY SUSAN FRANK

Susan E. Frank

Summary of Submissions of Hydro One Networks Inc. for Motion to Review

Decision on EB-2006-0189

In response to the Board's Notice of Hearing and Procedural Order No. 1, issued on October 26, 2007, Hydro One Networks Inc. ("Hydro One") makes the following summary of submissions on the four matters identified by the Board.

1. Request to Extend Deadline

Hydro One was unable to meet the 20-day filing period for a number of reasons. Hydro One did not take the decision to file this Motion lightly. Hydro One required time to weigh the significance and scope of the Decision and the options available not only to Hydro One, but also to other parties who would be harmed by the Decision.

Hydro One required sufficient time to inform its Board of Directors of the level of concern and allow time for seeking direction on whether to ask the Board to review the Decision. Also, during this time period, a growing number of customers and other parties continued to raise concerns to Hydro One that the implications of the Decision could have serious negative impacts.

Hydro One consulted with the Chief Compliance Officer (CCO) and customers to arrange a meeting with the CCO and customers to explore the implications of the Decision. As part of the consultation with customers, it became clear that a formal review before the Board would be more effective, leading Hydro One to pursue a review, notwithstanding that 20 days had passed.

Hydro One submits that although its Notice of Motion was filed after the 20-day time period, there would be no harm or prejudice to anyone if the Motion were nevertheless heard by the Board. For that reason, and for the reason that the Decision and the Notice of Motion raise serious issues and consequences, Hydro One submits that the late filing should not be the basis for denying a review of the Decision.

2. The Threshold Question (Rule 45.01)

Contestability (Section 3.3 of the Decision)

With respect to section 3.3 of the Decision, Hydro One submits that the evidence was incomplete, and the facts now being brought forward could not have been discovered at the time of the hearing. These facts are material and relevant, and would have changed the outcome of the Decision.

The breadth and scope of the services provided by Hydro One to third parties were not discoverable as evidence for the proceeding, because the parties were unaware that Hydro One's authority under section 71(1) of the *OEB Act* to provide such services was part of the subject matter of the proceeding. Therefore, much of that factual evidence was not brought to the attention of the Board, nor could it have been. Aside from Hydro One's concerns about the impact of this Decision, the matter is material to Hydro One's customers. Furthermore, the nature and extent of the services provided by Hydro One to third parties would have assisted in the interpretation of section 71(1) of the *OEB Act* and would have illustrated the harm that would result to consumers if these services were to cease.

The appropriateness of Hydro One's role as a contractor with respect to customer-owned equipment was at no time identified as an issue in any of the Procedural Orders, nor could it reasonably have been expected to be an issue in the proceeding, which was intended to review specific Connection Procedures filed by the Applicant. Procedural Orders 1 and 2 did not identify any specific issues; and Procedural Order 3 referenced only the cost responsibility issue. Hydro One's role as contractor was raised only in three interrogatories (ECAO #1 and #2, and Board Staff #28), and those interrogatories focussed only on connection facilities and there would have been no opportunity or reason for intervenors or the Board to explore other types of external work that Hydro One performs for customers. The result is that evidence on this matter was incomplete. A meaningful discovery of the issues surrounding the contractor role did not occur, nor could it have occurred in such a limited exchange, especially since the subject was, at best, tangential to the Connection Procedures that formed the subject of the proceeding. Hydro One submits that the scope of a hearing is not enlarged simply by the asking of an interrogatory, nor should other parties in the proceeding or the Board itself be expected to assume that the scope of the hearing was suddenly enlarged by the asking of such interrogatory.

As tangential as the Applicant's role as a contractor with respect to construction of customer-owned connection assets was in the proceeding, it was even less possible for either the Applicant, intervenors or the Board to foresee issues regarding the numerous other contractual services provided by the Applicant to third parties, which contractual services are seriously negatively affected by the Decision. The consequence was that there was incomplete evidence and information before the Board on matters that did not seem to be in issue in the proceeding, which could result in major effects on not only the Applicant, but also on third parties who want the option of purchasing such services from Hydro One and are the beneficiaries of such services.

And furthermore, with respect to work on customer-owned connection facilities, Hydro One submits that the Board erred in fact and law by not considering the harm caused to third parties and the harm caused to the marketplace by forbidding Hydro One to perform such work when the customer specifically chooses Hydro One from the available list of service providers. The Decision shows no consideration by the Board of such harm. Nor does it show the weighing of such harm to customers by withdrawal of such services, and the benefit of providing choice in the marketplace, as contrasted with the Board's concern that Hydro One might subsidize such work to the detriment of its ratepayers. Hydro One submits that the foregoing facts and considerations are both material and relevant.

The interrogatories from Board staff and the ECAO explored Hydro One's right to perform certain work, bearing in mind section 71(1) of the *OEB Act*. Hydro One responded to those interrogatories directly and reasserted its right to do so. What the scope of the interrogatories failed to elicit was the technical and reliability impacts on customers of forbidding the transmitter from performing this work. These impacts are both material and relevant. For example, the Board heard no evidence about the critical nature of the protection and control work on new connection facilities where customers insist that Hydro One provide these services, partly because of the serious consequences that would occur if the work is not done correctly, and also because of the lack of alternative, qualified, service providers. Given the Board's mandate to protect the interest of consumers under the *OEB Act*, Hydro One submits that these facts would have changed the outcome of the Decision. The Board should therefore be able to hear these facts in its deliberation of the Decision, not only from Hydro One, but especially from customers.

Examples of facts that were not discovered at all in this proceeding or were only partially discovered, because it could not reasonably be expected that parties would have seen either an opportunity or the appropriateness of submitting such evidence, are as follows. All of these aspects are material and relevant, and merit a fuller discovery and the opportunity for parties other than the ECAO and Board Staff to place evidence on the record in the proceeding.

- Hydro One acts as a contractor and service provider to meet the needs and demands of its customers. Those needs and demands are often specialized, and cannot be easily met by other parties, particularly at nuclear facilities.
- Hydro One prices all of its external work using transparent, "fully-allocated" costs. The Board erred in its concern about cross-subsidization. The Board's Decision states, "The effect of the transmitter competing in the marketplace for the construction of customer-owned connection facilities is to raise the spectre of potential cross-subsidization of these unregulated activities by the regulated transmission revenue requirement." However, the work in question is costed in a rigorous and transparent manner as noted above, with the specific intent and effect of avoiding cross-subsidization. Hydro One's pricing for external work includes:
 - all costs directly attributable to the product or service being provided, such as:
 - cost of materials, including applicable surcharge
 - freight charges

- fully burdened labour¹
- transport and work equipment charges
- o an appropriate margin
- o a reasonable share of indirect costs or overheads to the extent that they are a cost of doing business or otherwise needed by the customers of the particular products and services. (These may include applicable shared functions and services costs, such as space, telecom, finance, human resources, supply management, health and safety, etc.)
- o depreciation, and
- o any incidental costs
- Hydro One's provision of "contractor" services to customers actually reduces rates through external revenues, and specifically through the margins that are added to the fully-allocated costs and through the absorption of fixed overheads, all of which are recovered from the customers of these "contractor" services.
- Hydro One's ability to provide external transmission services improves efficiency and resource utilization.
- A cessation of such work could cause significant hardship and risk for parties that use and rely on Hydro One to provide such services.
- Customers and contractors often request Hydro One to install protection and control equipment on new load and generator equipment on the customer's assets, because of the critical need for such assets to communicate effectively with the transmitter's corresponding equipment and because of Hydro One's unique skills in this field.
- Hydro One's contractor role is not limited only to connection assets. The contractual services provided by Hydro One to third parties, which services may or may not be on customer premises, include:
 - (i) *Engineering and construction for new or modified customer-owned transmission lines and stations (including protection and control)*
 - (ii) *MSP services-* Services for Metered Market Participants to maintain compliance with IESO Market Rules
 - (iii) *Station maintenance-* Routine maintenance on breakers, transformers, switches, etc.
 - (iv) *Protection and Control Maintenance-* Routine maintenance on relay panels, current transformers, potential transformers, etc.
 - (v) *Overhaul and Repair-* Major overhaul and repair activities on breakers, transformers, switches, etc., including specialized services for transportation (e.g. "Schnable" rail car) and machining (e.g. low-pressure spindles for nuclear) requirements
 - (vi) *Miscellaneous-* Minor services, such as fleet repair & inspection, specialty tool rentals, special studies, training, etc.

Additionally, the Board was unable to consider the effect on consumers (not only the third parties to whom Hydro One provides services but also Hydro One's ratepayers who benefit from the Applicant's provision of such services to other third parties) if customer choice were to be lessened by forbidding Hydro One to provide services to third parties.

¹ *Fully burdened labour* refers to costs based on the standard labour rate applied on normal hours (which includes a payroll burden rate and a "Sickness, Accident, Vacation and Holidays" burden rate) and the average salary rate applied on overtime and premium hours.

Because of the absence of relevant evidence and information as to Hydro One's services performed for third parties, the Board was without facts and submissions showing that the services provided by Hydro One are ancillary to, or related to, transmission and distribution, and therefore not prohibited. Those facts are material and relevant to the interpretation of section 71(1) of the *OEB Act*.

Transmission Plans (Section 3.5 of the Decision)

The evidence that was before the Board consisted, in part, of the Transmission System Code ("TSC"). The Board erred in fact and in law by making a finding in its Decision that was contrary to that evidence. In particular, the Board did not consider or reach a TSC-based conclusion that could have been reached and instead based its conclusion on principles and definitions not found in the TSC. The error is material and relevant to the outcome of the Decision; and if the error were corrected, the outcome of the Decision would change.

Specifically, the Board stated that the only exemptions available to customers are the cost responsibility exemptions associated with "unique system elements" (page 24) and plans for "system reliability" only (page 22). There is no basis in the TSC for exemptions related to these two categories. Nowhere in the TSC is there a basis for the Board to find that "unique system elements" can serve to exempt a customer from the requirement to make a capital contribution. The expression "unique system elements" cannot be found in the TSC. The Decision references section 6.3.8 of the TSC, but section 6.3.8 addresses the overbuilding of facilities, not unique system elements. Therefore, uniqueness, as an exemption for capital contribution, is not TSC-based. Additionally, the Decision references section 6.3.6 of the TSC as a basis for the concept of a "system reliability plan", but section 6.3.6 contains no mention of a system reliability-only plan, nor is there any reference to such a plan anywhere else in the TSC. The result is that the concept of a system reliability plan is also not TSC-based.

The TSC rightly does not contemplate a system reliability-only plan since, as even the Decision acknowledges, there can be ambiguity between system reliability and customer-driven plans. Having acknowledged this ambiguity, the Decision nevertheless fails to adequately address the issue. Intervenor submissions noted that plans to address reliability and load growth are inexorably intertwined. To require a capital contribution from one customer who requests an enhancement on certain connection facilities, while exempting a contribution from another customer who does not request it – even if the facilities are identical and serve the same purpose – is not only inconsistent but also simply unfair. Similarly, it is inconsistent and unfair to require a capital contribution from one customer who participates in a joint study with Hydro One on certain connection facilities, while exempting a contribution from another customer who does not participate in such a study. The fact that the consequences of the Decision implicitly assign cost responsibility in identical circumstances based on the mechanics of the process by which the plan was developed, rather than based on who benefited, results in inconsistency and calls into question the correctness of the Decision.

In its submission to the Board on July 9, 2007, the OPA asserted: "In the case of LDCs, long term plans to meet reasonably anticipated load growth and maintain the reliability and integrity of the transmission system should address the need for new or upgraded line connection facilities

to LDCs. The result of this would be that only in exceptional circumstances, such as a major new customer being connected to the distributor, would an LDC be required to pay a capital contribution with respect to a line connection facility. To do otherwise has the potential to result in distorted planning decisions being made to avoid significant line connection costs being imposed on small utilities. This then leads to sub-optimal results from a system perspective.” Hydro One submits that, even with the Board’s creation of the two categories above (“unique system elements” and “system reliability” plans), the Board erred by not addressing the OPA’s concerns in its Decision, with the result that the OPA’s foregoing fears will be realized. These consequences would have material impacts on consumers.

Section 6.3.6 of the TSC specifically requires a transmitter to “develop and maintain plans to meet load growth and maintain the reliability and integrity of its transmission system”; and Section 6.2.5 requires a transmitter to “ensure that there is sufficient available capacity” to satisfy the requirements of its customers. These plans are the ones referenced in section 6.3.6 of the TSC, for which capital contributions are exempted. Section 3 (Cost Responsibility) in the *Synopsis of Changes to the TSC* further states, “Such plans are expected to be developed by transmitters to address growing demand, system reliability and integrity. These plans will also be essential to determine whether a particular connection project is truly triggered by the needs of a specific customer.” Such plans are Local Area Supply plans as defined in the Applicant’s Connection Procedures, so such facilities should therefore be exempt from the requirement for capital contributions. The Board erred by not reaching a conclusion on the basis of the TSC, as is required.

The Board’s Decision creates regulatory uncertainty by necessitating that cost responsibility for connection facilities be determined on “a case-by-base basis” (page 23 of the Decision). Such an ad hoc approach would lead to inconsistent and unfair treatment of customers with respect to cost responsibility for connection facilities. In the absence of a well-defined process to permit Hydro One to determine the proper allocation of cost responsibility, customers would not know with any certainty whether a capital contribution is required, or the amount of that contribution, to proceed with a particular project. Hydro One would need to incur delays to the development of Leave to Construct applications, to consult with the Board and seek clarity in advance for each project, to determine what costs are excluded from the economic assessment for capital contribution determination. If the Board were to empower staff, instead, to make such assessments, their determinations would need to be upheld by the Board panel in each case. It is extremely difficult for Hydro One and other parties to make business decisions where cost responsibility is uncertain in each case until approval is obtained from the Board. The case-by-case approach proposed in the Decision is impractical and would lead to customer confusion and unnecessary exposure to financial risk for both Hydro One and customers. To provide further information to the Board, Attachment 1 lists some of the upcoming section 92 applications, as foreseen by Hydro One.

Additionally, the plain meaning of the words in section 6.3.6 of the TSC is that the transmitter shall not require the customer to make a capital contribution in the circumstances described in that section. There is nothing in the TSC to indicate that section 6.3.6 is a provision to be used only as an “exception to the general rule” (page 22, and also pages 23-24). In fact, section 6.3.6 is a standalone section that has at least as much merit and weight as any other section of the TSC.

If the Board's error were corrected, a different outcome of the Decision would have been reached. Specifically, that outcome would:

- recognize that transmission planning is necessarily an integrated exercise which addresses load growth, system reliability and integrity, which elements cannot be separately considered for the purpose of assigning cost responsibility;
- lead to consistent and repeatable decisions pertaining to cost responsibility, rather than the inconsistent and unfair "case-by-case basis" mandated by the Decision; and
- not rely on the communication process between the transmitter and its customers to assign cost responsibility, but instead focus on the intended benefit of the facilities.

Further, the Board made another error of a similar nature by stating: "*Hydro One's interpretation of section 6.3.6 of the Code is not one adopted by the other transmitters, nor is it one that is without a fairly high degree of complexity and artifice.*" Regardless of whether the Board is correct in its statement about the practice of other transmitters, Hydro One submits that the interpretation used by other transmitters is irrelevant and, in any case, such transmitters who, in aggregate, account for 3% of Ontario's transmission system, do not face the same planning environment as Hydro One. Using them as an example is therefore not helpful to reach an understanding. None of the other transmitters in Ontario has the breadth or scope of transmission infrastructure or the number of customers to require the extensive type of Local Area Supply ("LAS") planning used by Hydro One.

Additionally, in interpreting section 6.3.6 of the TSC, Hydro One has relied on the plain meaning of the words in that section. Hydro One submits that, by the Board's having created new, non-TSC-based definitions and concepts to try to interpret section 6.3.6, the Board has introduced a complexity not found in the TSC itself. Therefore, Hydro One rejects the Board's finding that Hydro One's submission resorted to complexity and artifice.

The Decision failed to protect the interest of consumers and was contrary to regulatory principles, thereby raising a question as to the correctness of the Decision.

Section 3.5 of the Decision states:

It is clear that, taken as a whole, section 6.3 of the Code (including the sections referenced above) provides that in almost all cases where the transmitter is enhancing its equipment to accommodate the needs of a line connection, a capital contribution will be required from the customer or customers who benefit from the enhancement.

The Decision failed to recognize or adequately address the following:

- (a) Local Area Supply Facilities are primarily for the benefit of the pool, and this benefit is directly related to system reliability and integrity.
- (b) The risk that properly planned Local Area Supply facilities will not be placed in service because of one or more customers' inability to raise the capital for contributions.

(c) A substitute for Hydro One's [rejected] definition of a rule-based contribution policy that would exempt Local Area Supply facilities from a contribution. Instead, the Decision adopts an unfair and inconsistent case-by-case approach for determining whether a plan meets the criteria giving rise to an exception, thereby introducing an unmanageable level of regulatory uncertainty and financial risk that is inconsistent with other aspects of the TSC.

(d) The TSC was not intended to assign cost responsibility based on "who spoke to whom" but rather based on benefits. The nature of the discussions leading to new or modified facilities is irrelevant to cost responsibility.

3. Request for an Order Staying Implementation

Hydro One has requested an order staying the implementation and effects of sections 3.3 and 3.5 of the Connection Procedures Decision in order to protect its customers. In doing so, Hydro One asserts the following:

- i) Hydro One's Motion to Review the Decision has merit, as evidenced by the submissions above and by the interventions of other parties.
- ii) Implementation of this Decision would certainly lead to harm for certain consumers. The extent to which that harm is irreparable can only be evidenced by those consumers.
- iii) The balance of convenience favours the continuation of the status quo until such time as the Board has had an opportunity to review the Decision.
- iv) Cessation of Hydro One's services and implementation of large capital contributions by customers would have a significant impact on consumers at this time.

With respect to section 3.3 of the Decision, after learning of the Board's Decision, Hydro One had to cease undertaking any new work on customer-owned connection facilities, despite having been approached by customers to do such work. Because of the Decision, Hydro One has had to explain to those customers that they no longer have the choice of selecting any transmitter or distributor to do the work. It is Hydro One's understanding that at least one customer, and perhaps others, have put such work on hold until Hydro One can advise them whether it is in position to perform the work. Given the uncertainty and hardship on customers who require such services, Hydro One requests a stay of the Board's Decision that prohibits Hydro One from performing such work on customer-owned connection facilities.

With respect to ongoing work performed by Hydro One for large generators, such as Bruce Power and OPG, Hydro One can inform the Board as follows. As OPG stated in its October 18, 2007 letter to the Board, "An immediate cessation of such work, without sufficient time to find or develop a replacement capability, would cause significant hardship and risk to OPG and may compromise the reliability of OPG's equipment and facilities."

In addition, Bruce Power stated in its October 16, 2007, letter to the Board, "Hydro One currently provides a number of services ... which are essential to our ability to deliver electricity

into the grid ... at the current time, Hydro One is the only vendor in the Province able to offer the full range of services we require ... in the event that Hydro One is precluded from providing these essential maintenance services a significant risk to the operations of Bruce Power would result.”

With respect to section 3.5 of the Decision, Hydro One submits that until the Decision is reviewed, it would be impractical to discuss or assign cost responsibility for projects encompassed by s. 92 of the *Ontario Energy Board Act, 1998* (“the *OEB Act*”), and other transmission connection facility projects, that may fall in the category of “local area supply” facilities.

Additionally, until and unless the Decision is reviewed, there is a lack of regulatory certainty for all parties involved in determining cost responsibility, as the Decision introduces the concept of two types of transmitters’ plans and “unique system elements” that are not defined in the Transmission System Code (“TSC”).

Lastly, Hydro One submits it is only reasonable to request an order staying implementation of sections 3.3 and 3.5, given that implementation of these sections of the Decision at this time would cause serious negative consequences to customers.

4. Request to Extend Deadline for Revised Connection Procedures for Matters Affected by Sections 3.3 and 3.5 of the Decision

Hydro One filed its revised Connection Procedures on October 12, 2007, and indicated the two areas in the Procedures that would need substantial changes as a result of sections 3.3 and 3.5 of the Decision. Hydro One submits that it would be premature for Hydro One to revise and file its Connection Procedures in these two areas prior to a review of the Decision.

Attachment 1: Leave to Construct Application Schedule

Project	Description	OEB Filing Date	In-Service Date
Vanessa Junction Tx/Norfolk TS (Local Area Supply Project)	Add second 115 kV circuit on existing ROW using existing towers (12 Km). Capital contribution required as per OEB Decision.	4 th Quarter 07	Feb 2009
Woodstock East (Local Area Supply Project)	New Woodstock TS requires new 2-cct 115 kV tap and new 2-cct 115 kV line from Woodstock TS to new TS. Capital contribution required as per OEB Decision.	1st Quarter 08 EA required	2010
Windsor Essex (Local Area Supply Project)	Upgrade 12 Km of Keith to Essex line, new Sandwich Jct to Lauzon line. Capital contribution required as per OEB Decision.	1st Quarter 08 EA required.	2010
Leaside TS to Birch Junction (Load Connection Project)	Construct new 3.9 Km 115 kV circuit between Leaside TS and Birch Junction. Capital contribution required.	4th Quarter 08 EA required.	2011
Guelph Area (Load Connection Project)	Upgrade 5 Km of transmission line between Campbell TS and CGE junction. Capital contribution likely.	2nd Quarter 08 EA required.	2010
Mattagami (Generation Connection Project)	Conversion of 4 Km of 230 kV line from Kipling GS to Harmon TS and build double circuit 230 kV from Smokey Falls GS. Capital contribution required.	TBD EA Amendment.	2011
IPSP Development Work (2008 start)	North-South, Sudbury West, Sudbury North, East Lake Superior, Little Jackfish/East Nipigon, Goderich, Bruce Peninsula, Manitoulin Island, Oshawa, Northern York Region, Kitchener-Waterloo-Cambridge-Guelph/(KWCG), Southwest GTA, Thunder Bay. Capital contributions likely required.		