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BY COURIER

May 31, 2010

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

Dear Ms. Walli:

**EB-2010-0059 – OEB Proposed Amendments to the Distribution System Code: The Alternative Bid Option - Hydro One Networks Inc. Comment**

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I am attaching three (3) paper copies of the Hydro One Networks' comments on the staff Discussion Paper on Transmission Project Development Planning.

The electronic copy has been submitted using the Ontario Energy Board's Regulatory Electronic Submission System and the confirmation of successful submission slip is provided with this letter.

Sincerely,

ORIGINAL SIGNED BY SUSAN FRANK

Susan Frank

Attached

**SUBMISSION OF HYDRO ONE NETWORKS INC.  
REGARDING THE STAFF DISCUSSION PAPER  
ON TRANSMISSION PROJECT DEVELOPMENT PLANNING**

**MAY 31, 2010**

Contact Information

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## **Introduction**

Further to the Board's letter dated April 19, 2010, Hydro One is pleased to provide its comments on Staff's "Transmission Project Development Planning" Discussion Paper. Hydro One supports further refinement and implementation of the framework described in the Discussion Paper. We generally view the draft framework as an important first step to achieve the objectives of timely and cost-effective development of renewable generation projects identified by the OPA in its Feed In Tariff ("FIT") program. The framework encourages the introduction of new transmission companies which Hydro One is supportive of particularly as it relates to partnerships.

Our comments first address general observations regarding the proposed framework and its intended application. We next address the specific issues described in the Staff Discussion Paper and discuss other potential concerns and suggest potential improvements intended to facilitate the stated objectives as well as improve upon overall process certainty.

## **General Comments**

### *Scope*

Hydro One understands the scope of the proposed framework applies only to FIT-based renewable generation projects that have been assessed through OPA's Economic Connection Test ("ECT") process. Transmission projects not based on FIT results are unaffected by the proposed framework and those projects may continue to be planned by individual transmitters and follow existing processes including, where applicable, applications made immediately for leave to construct pursuant to section 92 of the *Ontario Energy Board Act* ("Act").

### *Project Categorization*

The framework contemplates that the ECT process will identify four broad categories of transmission investment. The development of projects falling within two of these categories (enabler facilities and major network expansion projects) is intended to be subject to a competitive bid and a Board designation approval process. The other two categories (capacity enhancements and network reinforcements) would not be the subject-matter of a bid or

designation approval process and development of these Projects would proceed in a manner consistent with those that fall outside of the FIT process.

Limited descriptions of each of the four categories of transmission investment are currently provided in the framework.<sup>1</sup> Given the importance that each of these categories will have to the overall competitive bid and designation process, Hydro One believes greater description and definition of the categories should be provided, particularly in relation to network expansions and network reinforcements. In Hydro One's view, projects falling within the network reinforcement category should be defined as those that use existing transmission network facilities, including transmission corridors. That definition would capture projects like the Bruce to Milton Reinforcement project which utilizes part of the adjacent transmission corridor as a means to reduce the width of new corridor requirements. That approach is consistent with provincial land-use policy requiring the optimization of existing infrastructure corridors and is one which provides significant advantages in terms of minimizing costs, time to construct and impacts on landowners. Hydro One believes that it would be prudent to follow this efficient planning approach on future transmission projects, and that categorizing projects like Bruce to Milton that anticipate using widened corridors as network reinforcements would ensure that prudent planning principles are adopted on a consistent basis.

Hydro One also observes that incumbent transmitters have relationships with landowners and First Nations/Métis groups along existing corridors that have been established and nurtured over many years. These relationships could be affected if another transmitter were to own and operate a line infringing on those corridors. This could happen not necessarily through any negative actions on the part of the new transmitter but simply due to the nuisance factor for landowners and other interest-holders in having to deal with multiple operators in arranging for access to land for ongoing maintenance purposes. This provides another reason, in Hydro One's view, for incumbent transmitters to operate and maintain (and preferably own) new facilities that anticipate making use of existing corridors.

The cost savings for incumbent transmitters that arise relate to both lower capital costs for land acquisition due to the narrower width required for a widened corridor, and lower maintenance

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<sup>1</sup> See Page 5 of the Discussion Paper.

costs due to the efficiencies of having the incumbents' crews that are already doing the maintenance work on the existing line, extend that work at low incremental cost to the widened corridor. These cost savings provide another advantage to the system for having incumbents build projects that complement and provide synergies to existing transmission facilities.

Given the definition of network reinforcement above, network expansion projects would then be defined as greenfield projects, i.e., major new network facilities that do not use existing transmission assets including existing transmission corridors or rights of way.

#### *Minimize Proliferation of Network Operators*

Hydro One believes that there are strong safety, physical security, operating and reliability considerations for requiring that incumbent transmitters continue to operate facilities that comprise the integrated transmission network. This would include any network expansions that are constructed under the Board's designation process. A proliferation of network operators controlling parallel transmission facilities ought to be discouraged due to the additional operating complexity that would inevitably arise. For that reason, Hydro One suggests that the Board should require that non-incumbents building new network facilities sign operating agreements with the incumbent transmitters to which their facilities connect, to have the incumbents operate those new facilities.

There are also likely to be significant cost advantages in having incumbents operate new network facilities as doing so would avoid new operators having to build duplicate operating centers and other facilities (e.g., new adjacent stations at the point(s) of inter-connection with the incumbent's system).

The concerns outlined above in regard to operating complexity do not arise with respect to non-network facilities (i.e., radial lines or enablers) that could be built and operated by new transmitters. These facilities operate independently of the transmission network and hence there is no reason that they could not be operated by new transmitters, provided of course that the new facilities are fully compliant with applicable technical and reliability standards.

*Approval Timelines, an Untested Process and the Texas experience*

Hydro One notes that, if adopted, the designation stage contemplated by the Board could add 12 months or more to what is already a lengthy approvals process for transmission expansion projects in the province. For that reason and given the urgency of the need for FIT-approved projects that are already awaiting transmission capacity, Hydro One suggests that the Board should make every attempt to keep the timelines of the designation stage as short as reasonably possible. It should also minimize the number of steps in the process. In Hydro One's view, development plans should be quickly submitted, evaluated and projects awarded.

To that end, Hydro One suggests that the hearing process should be expedited and that the Board can be informed by the Texas experience in shortening the time required to review the applications and make a decision. In Texas, Commission Staff determined after reviewing the initial and revised bids and based on several rounds of information exchanges among the bidders that there was little to distinguish among the majority of bids in terms of technical competence, financing ability, ability to build or unit costs [Ref. PUCT, Docket #35665, Staff Evidence and Final Order]. Hydro One suggests that a similar situation is likely to arise in Ontario and that an expedited hearing process with a minimum of interrogatory and other discovery steps is therefore a reasonable approach for the Board to take. This would assist in leading to a timely decision and would avoid the risks of delay that a lengthy public process would entail.

It should also be noted that using a competitive bid framework is untested in the transmission context in Ontario, and a competitive bid approach has its own risks in terms of time and process uncertainty. In that regard, the Texas experience is again instructive. There, the Texas PUC designation Order was challenged in court by a losing bidder, which added time to the process. A similar situation could arise here, as litigation of contract awards is not an unknown occurrence in bidding processes involving major contracts. Mitigation of this risk should be considered as part of the development of any formal bidding and designation process.

Finally, in regard to the Texas experience, Hydro One notes that to this point none of the transmission line projects that were subject to the competitive bid process have yet to be built, and as such it is too soon to determine the success or otherwise of the Texas experiment.

### *Priority Projects Should Not Be Subject to the Designation Process*

In furtherance of the goal of timely approvals, Hydro One also suggests that projects determined by the OPA to be critical ought not to be subject to the designation process but instead should be awarded to incumbent transmitters for immediate development. As noted above, the designation stage could add up to 12 months to the existing approvals timeline and Hydro One believes that it is not in the public interest or consistent with government policy regarding the timely connection of FIT-approved renewable generation to have that generation wait any longer than absolutely necessary for the additional transmission capacity it requires to be put in place. Incumbent transmitters have the resources, knowledge and ability to quickly begin the development work on the priority projects and Hydro One submits that the Board should immediately award them to the incumbents, upon identification by the OPA, so that the development work can begin. This approach would mirror the approach taken in Texas where priority projects bypassed the designation process and were awarded to incumbents for speedy development.

### *Definition of Development Work*

Hydro One understands that the term “Development” found in section 1.4 of the Discussion Paper<sup>2</sup> is intended to describe the types of work and costs that would be addressed in any development plan. The approval of such plan is then intended to provide the designated party with a degree of certainty over the recovery of such costs. Under the “Development” definition, Hydro One observes that only activities and costs necessary to prepare and proceed with a section 92 application are included. Costs incurred after a section 92 application has been applied for do not appear to be within the scope of the definition. Hydro One does not support this limitation. During the section 92 application phase, it is customary for development work to continue. For example, corridor and route planning, First Nation consultation and accommodation negotiations, landowner consultation and negotiations and various environmental assessment activities normally continue throughout the section 92 application

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<sup>2</sup> The term Development is defined at page 4 of the Discussion Paper as follows: “Development” is work, including consultation, route planning, engineering and site/environmental studies, undertaken in order to choose among options and/or prepare an application for leave to construct. From the regulatory perspective, this stage lasts from the approval of a transmission project development plan *until leave to construct is applied for* or until a project begins construction, if leave to construct is not required.” (emphasis added)

phase. We see no reason why the costs of carrying out these types of activities should be distinguished from the costs and activities carried out prior to a section 92 filing, and suggest that these costs should also be recoverable.

Additionally, we believe that the costs of preparing development plans should be recoverable by the successful bidder. Losing bidders would not get recovery. This measure would serve to provide an appropriate commercial incentive to proponents in regard to plan content and scope.

#### *Amount and Quality of Information*

The timely preparation of transmission development plans will be critical to achieving the framework's objectives. As noted above, Hydro One believes that the Board should set the timelines for the designation process, including for submission of plans, as short as reasonably possible in order not to add significant further delay to an already lengthy approvals process.

The need for speed will inevitably mean, however, that the information contained in the plan is general and at a high level. In this regard Hydro One has a concern with the quality and level of detail of the information that is contemplated under the Staff proposal to be provided at the designation stage. In Hydro One's view the detail required is likely not to be available at this early stage in the development of the projects included in the plans. The quality of the information, especially in relation to construction cost and schedule, is also not likely to be high. These shortcomings will be common to all plan submissions which poses an issue for the Board in terms of the level of reliance it can place upon the information for the purpose of making a designation decision.

For these reasons, Hydro One suggests that the Board's decision criteria should focus away from "hard" data like costs that are likely to be problematic in terms of quality and that in any event are likely to be similar among all bidders. Instead more weight should be placed on factors such as organization, experience and technical capability. More details are provided in Hydro One's response to Issue #3 below.

#### *Designation Carries Through to Implementation*

A further suggested area of clarification to the framework concerns the Board's expectations following the designation approval and project development phase. Hydro One supports Staff's



proposition that transmitters who have received designation approval would usually proceed through the project development phase and then file section 92 applications. Hydro One suggests this should be carried further and only in exceptional circumstances would a transmitter not proceed to implement the project, subject to the Board's general discretion which Hydro One believes it would be useful for the Board to have to revoke a designation for non-compliance (see next section for more details).

Hydro One also notes that under the proposed framework, transmitters who were not designated could presumably participate in a section 92 application process and potentially use this forum to advocate the reconsideration of earlier rejected proposals, and in particular, as a viable alternative to the applied-for Project. In Hydro One's view this potential outcome should be avoided. The section 92 application stage should not turn into a forum that allows for the reconsideration of development plan decisions.

### *Performance Standards*

Hydro One suggests that the Board should have the discretion to revoke a designation where the successful bidder is found not to be compliant with the terms of the designation approval. However, Hydro One believes that at this stage it is too early to attempt to set out in detail what the triggers or causes of non-compliance could be, and that it is better to let the Board determine, using its discretion, when the point of non-compliance is reached and what to do about it. This is the approach taken in Texas, where the Commission has the power to revoke a designation approval, but the Rule providing for such revocation does not specify in detail what could trigger it [Ref. Texas PUC, Rule 25.216].

### **Specific Comments On Identified Issues**

***Issue 1: Should New Entrants be required to be licensed as transmitters as a condition of participation in the designation process?***

Yes. A pre-requisite that each bidder must hold a valid transmission licence provides a minimum standard which ensures the competencies and capabilities of all participants. Imposing this requirement is likely to reduce the level of review the Board would need to

undertake in order to assess each bidding entity's background and the nature and level of its experience in the transmission industry and, in particular, in Ontario.

***Issue 2: How long would it take to prepare transmission development plans (i.e. how much time should be given for filing transmission project development plans after notice of the designation process has been given)?***

Given the discussion above in regard to the need for an expedited designation stage with the shortest possible timelines, Hydro One believes that 2 months is sufficient time to file development plans.

***Issue 3: Are [the criteria identified in Section 3.1 of the Discussion Paper] the appropriate decision criteria? Should the decision criteria be weighted and if so, which are the most important?***

The Discussion Paper identifies six main decision criteria:

1. Organization and experience of the transmitter and its management team
2. Technical Capability and expertise of the transmitter and its management team
3. Schedule, estimated timelines and prioritization of the project(s) identified in the transmission development plan
4. Costs, estimated budgets and cost reduction opportunities
5. Financing
6. Landowner and other Consultations

Hydro One is generally supportive of the identified decision criteria. As noted previously, our main concern lies with the quality and level of detail of the information that is expected to be provided at this initial stage, and the level of reliance which the Board can place upon this information for the purpose of adjudicating and making a designation decision.

Two specific comments concern the description and scope of the Technical Capability criterion. First, Hydro One believes that this decision criterion should include each bidding entity's ability to meet health, safety and environmental standards. Second, it is not clear to Hydro One how technological innovations proposed in relation to a project are expected to be identified or adjudicated at this preliminary stage and on an objective basis given the fact that underlying

development of the project itself has not yet commenced. While discussion of the technical innovations which the transmitter intends to examine as part of the development phase of the project may be what is intended by this reference, it remains unclear how this type of discussion could be used as an objective decision criterion. Hydro One also suggests that the criterion should include an assessment of the risk inherent in new and untested technology.

A similar concern arises with respect to the construction schedule and budget. At such an early stage in the project development process, the quality of the construction cost estimate and its underlying schedule will be of uncertain quality and thus value. It is therefore unclear what reliance the Board could reasonably place on these estimates for decision-making purposes. Unit cost information may be a more informative metric, but even unit costs are likely at this stage to be indicative only given that unit costs (e.g., costs per structure or per kilometre) could be subject to significant variation given the lack of detailed information regarding route, terrain and environmental features available at the designation phase.<sup>3</sup> As noted previously, in the Texas example Commission Staff concluded after analysis of the bids that unit construction cost estimates were similar for all bidders and it also determined that this result was reasonable given the common factors underlying those costs (i.e., bidders would be using the same contractors, materials, and construction methods). As a result, Commission Staff further determined that unit costs were not useful in distinguishing between bidders. Hydro One is not aware of any reason why a similar result would not be likely to arise here.

For these reasons, Hydro One suggests that lower weighting should be given to the decision criteria discussed above (technological innovation and construction cost estimates including cost reduction opportunities) and higher weighting should be given to the other criteria, especially organization and experience, technical capability, and expertise and experience with landowner and First Nations consultation processes.

***Issue 4: Are staff's proposals regarding the implications of plan approval reasonable?***

Hydro One has one concern with the implications of plan approval which was touched upon in an earlier section. Specifically, Hydro One believes that designation should provide certainty to

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<sup>3</sup> Hydro One notes that during the initial phase of the Texas PUCT competitive development process, only unit cost information are provided by bidders. Fixed Cost Project estimates are expected to be provided in a second phase of the development process (i.e. the CCN stage) however several CCN process have not been completed to date, notwithstanding a period of almost 2 years has passed since the commencement of the process.

the designated party that they have been awarded the right to do the development work for the project per the plan, and also that the designated party will serve as the sole applicant for the section 92 application (subject to exceptional circumstances). Another party should not be able to use the development information of the designated party or in any event prepare and file a competing application for leave to construct the project or group of projects. Logically, the party who has been awarded the ability to develop the project should also have the right to construct the project and should not have the risk of a different party being able to take away the upside of development – namely implementation of the project.

***Issue 5: Under what circumstances should two transmitters be designated to develop the same project and to recover the development costs from ratepayers?***

Hydro One does not view there to be any reasonable circumstances where the Board should permit redundancy and duplication of development activities and the incurrence of costs by two competing project proponents. Hydro One is particularly concerned that this sort of duplication of effort will create unnecessary confusion. Development activities will involve interaction with directly affected stakeholders including the conduct of open-house public meetings and ongoing consultations with individual landowners for the purposes of evaluating potential routing or corridor alternatives. They will also include consultative efforts with First Nations as well as consultations for the purpose of preparing environmental assessment filings and the public dissemination of these materials. Having multiple proponents conduct duplicative and potentially competing stakeholder consultation processes is likely to be viewed negatively as causing unnecessary tension and uncertainty.

The principle which Hydro One endorses is that for each project there should be one and only one project proponent and that this determination should be made as early in the planning process as possible.

Following this principle, Hydro One also believes that proponents planning to submit development plans should not be permitted to engage in consultation activities with potentially affected landowners and other local stakeholders prior to submitting those plans or before a designation decision is made, and the Board should strongly discourage this practice. Avoiding this pre-consultation would prevent landowners from being approached by multiple proponents each with potential variations on a similar project. The result of engaging in such activities

could be to “poison” the relationship for the eventual winning bidder once the designated consultation work begins. Hydro One suggests that the Board should therefore make known its expectations in this regard as part of a set of bid rules when it calls for plan submissions and that it could enforce compliance through potential bid rejection and cost disallowance.

***Issue 6: Are [the filing requirements identified in Section 4 of the Discussion Paper] appropriate to enable the Board to apply the decision criteria identified in Section 3.1? If other decision criteria are being suggested, what additional filing requirements would be appropriate for the other criterion or criteria?***

From our review of the Discussion Paper’s detailed filing requirements associated with the decision criteria, a general concern again relates to the level and quality of information that transmitters are expected to provide. In some circumstances, it appears that the filing requirements are similar to the information that would be included in a section 92 application. In particular, this appears to be the case for project identification, schedule, cost information, and landowner and other consultations. Hydro One has no issue in providing this information if it is readily available at the time of the ECT determination. Information concerning the transmitter’s experience and technical capabilities would likely fall within this ambit.

However, other proposed filing requirements, such as the identification of a route and identification of right of way requirements and transmission facilities would need to be at a general level until the designated transmitter is able to carry out the necessary development activities such as route alternative analysis, landowner and stakeholder consultation processes and consideration of environmental matters. Having the transmitter explain the basis and the way in which proposed development activities are contemplated to address Schedule, Cost and Landowner and Other Consultation may be of more value than up front estimates themselves. For routing, this would include information about the planning principles to be used in selecting a preferred route (e.g., use of road allowance and existing transmission corridors to the extent possible, avoidance of natural features, etc.).