

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998;

AND IN THE MATTER OF an Application by Hydro One Networks Inc. for an Order or Orders approving exemptions to certain sections of the Distribution System Code.

WRITTEN SUBMISSIONS OF THE ONTARIO POWER AUTHORITY

October 29, 2010

STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West
199 Bay Street, P.O. Box 85
Toronto, Ontario M5L 1B9

James W. Harbell (23721H)

Tel: (416) 869-5688

Patrick G. Duffy (50187S)

Tel: (416) 869-5257

Fax: (416) 861-0445

TO: ONTARIO ENERGY BOARD
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

AND TO: HYDRO ONE NETWORKS INC.
483 Bay Street
15th Floor, North Tower
Toronto, Ontario M5G 2P5

Michael Engelberg
Tel: (416) 345-6305
Fax: (416) 345-6972
mengelberg@HydroOne.com

AND TO: MacLEOD DIXON LLP
Barristers & Solicitors
Toronto-Dominion Centre
TD Waterhouse Tower
79 Wellington Street West
Suite 2300, P.O. Box 128
Toronto, Ontario M5K 1H1

Ian A. Mondrow
Tel: (416) 203-4435
Fax: (416) 360-8277
ian.mondrow@macleoddixon.com

Lawyers for Association of Power Producers of Ontario

AND TO: Intervenor List

PART I - OVERVIEW

1. These are the written submissions of the Ontario Power Authority ("OPA") in response to Hydro One Network Inc.'s ("HONI") request for an exemption from sections 6.2.4.1e(i), 6.2.4.18a, 6.2.4.1c and 6.2.16 of the Board's Distribution System Code ("DSC") and the application date of the new cost responsibility rules.

2. In the event that the Board approves HONI's request for an exemption to section 6.2.4.1e(i), the OPA submits that the exemption should not incorporate the concept of "provisional capacity" and should be subject to the following conditions that ensure consistency with the objectives of the DSC:

- (a) The exemption shall apply only to the twelve projects that HONI has listed in Exhibit I-1-10.
- (b) Where only distribution system upgrades are needed to connect a proposed embedded generation facility, a connection cost agreement shall be signed within eleven months of the date on which the applicant received a capacity allocation for the facility.
- (c) Where both transmission and distribution system upgrades are needed to connect a proposed embedded generation facility, a connection cost agreement shall be signed within fourteen months of the date on which the applicant received a capacity allocation for the facility.
- (d) HONI shall distribute the Board's Order in this proceeding to the affected generators and publicly file with the Board on December 31, 2010, and monthly thereafter, a completed version of the table of projects attached as Appendix "A".

3. With respect to the other exemptions from the DSC requested by HONI, the OPA's position is that these are not necessary to deal with the issues identified in this application and ought not to be approved.

4. In light of the issues raised by this application, the OPA requests that the Board consider a process that would provide for the application of any exemption granted by the Board to HONI be open to other distributors.

5. The OPA takes no position on HONI's request for an exemption from the application date of the new cost responsibility rules.

PART II - SUBMISSIONS

A. Exemption from Section 6.2.4.1e(i)

6. The OPA recognizes that an exemption from section 6.2.4.1e(i) of the DSC may be needed so that the proponents of large embedded generation facilities do not lose their capacity allocations in the event that the process of completing a connection cost agreement ("CCA") requires more than the six months allotted by the DSC. However, the exemption sought by HONI should not be granted in the form requested because:

- (a) the exemption is unnecessarily complicated;
- (b) the exemption is overly broad
- (c) the exemption allows an unlimited amount of time to sign a CCA; and
- (d) the exemption does not provide for sufficient regulatory oversight of the connection process.

7. As discussed below, the OPA submits that appropriate conditions on any exemption granted to HONI are needed to address these concerns.

8. *The exemption request is unnecessarily complicated* - Through this exemption application, HONI is seeking to introduce the concept of a "provisional capacity allocation" into the DSC.

9. Under section 6.2.4.1a of the DSC, an applicant is to be granted a capacity allocation following completion of a connection impact assessment by the distributor ("Distribution CIA"). If granted in the form requested, HONI's exemption application would effectively replace section 6.2.4.1a with the concept of a "provisional capacity allocation", to be

confirmed upon completion of the subsequent System Impact Assessment and Transmitter Customer Impact Assessment ("SIA/CIA"). Under cross-examination, HONI's witness panel stated that if the SIA/CIA does not support the provisional allocation, the generator will not be offered a CCA and the capacity provisionally allocated to that generator will be lost.¹

10. It is also important to note that projects with a Feed-in Tariff ("FIT") contract with the OPA are required to pass a Distribution Availability Test ("DAT") and Transmission Availability Test ("TAT"),² which is undertaken by the OPA with the assistance of transmitters and distributors. The purpose of the DAT and TAT is to make a preliminary determination that there is sufficient capacity to accommodate a project. At the hearing, HONI's witness panel stated that under its proposed approach, even projects with FIT contracts that had passed the DAT and TAT could be denied a connection based on the results of the SIA/CIA.³

11. The OPA does not support the introduction of this new concept into the DSC. All generators, whether captured by this potential exemption order or not, should be treated the same and all have the opportunity to fairly achieve their position in the priority ranking when the Distribution CIA is completed. The DSC does not currently contemplate the allocation of "provisional" capacity that can later be revoked on the basis of the SIA/CIA and the OPA would be concerned if that concept were introduced into the DSC through this exemption application.

12. In addition, all twelve of the projects that HONI identifies as being at risk (the "Projects")⁴ completed the DAT and TAT assessments and were granted capacity allocations when their respective Distribution CIAs were completed in July or August 2010.⁵ To take away those capacity allocations and replace them with a new provisional allocation will be unduly confusing for the generators and an unnecessary complication. It will not be

¹ Hearing Transcript, p. 147, line 7 to p. 148, line 25,

² OPA FIT Rules, sections 5.2 and 5.3.

³ Hearing Transcript, p. line 26 to p. 150, line 2.

⁴ Exhibit I-1-10.

⁵ Response to Undertaking J1.1.

clear to other stakeholders what a provisional capacity allocation is or why these generators have lost the capacity allocation they so recently obtained.

13. If the Board wishes to contemplate this new provisional capacity concept, the OPA recommends it should do so as part of a broader inquiry into the role, timing and consequences of interconnection assessments and agreements under the DSC and not take an *ad hoc* approach as proposed by HONI.

14. *The exemption is overly broad* – The exemption sought by HONI is unlimited in both scope and duration. As presented, the scope of the exemption will apply to all embedded generators seeking to connect to HONI’s distribution system, not just the Projects identified by HONI. Similarly, if the duration of the exemption is unlimited as proposed, it will apply indefinitely to all future embedded generation projects seeking a connection.

15. To avoid the overly broad application of an exemption to section 6.2.4.1e(i), the Board should impose a condition that appropriately limits the exemption in both scope and time. During the hearing, HONI’s witness panel provided assistance on this point by confirming that an exemption to section 6.2.4.1e(i) is only required in respect of the twelve large projects listed in Exhibit I-1-10.⁶ Accordingly, it is the OPA’s view that the exemption should apply only to those Projects.

16. In the event that future circumstances require an exemption for projects other than the twelve identified by HONI, it will be open to HONI to seek appropriate relief from the Board on a case-by-case basis. When questioned on this point during the hearing, the HONI panel agreed that this was an acceptable approach for dealing with future projects for which exemptions may be needed.⁷

17. *The exemption allows unlimited amount of time to sign a CCA* – The exemption requested by HONI does not provide any substitute for the six-month period allotted to execute a CCA by section 6.2.4.1e(i); this is inconsistent with the two stated objectives that underlie section 6.2.4.1e(i) of the DSC:

⁶ Hearing Transcript, p. 13, lines 19 to 26 and p. 47, lines 10 to 23.

⁷ Hearing Transcript, p. 47, lines 24 to 28.

- (a) to ensure that renewable energy projects are connected in a timely manner; and
- (b) to ensure that projects which are not likely to proceed do not impede the allocation of capacity to more viable projects.⁸

18. In addition, all of the Projects are FIT projects and have firm commercial operation dates that they must meet under their FIT contracts with the OPA.⁹ Without a firm date for the completion of a CCA, it will be difficult for the OPA to effectively manage its contracts and ensure that FIT projects are moving through the system efficiently.

19. Accordingly, any exemption granted to HONI should contain a substitute for the current six-month period to execute a CCA. Based on the evidence presented at the hearing, the OPA submits that the following substitute timelines are appropriate:

- (a) In cases where only distribution upgrades are needed, HONI and the applicant should have eleven months from the date on which the Distribution CIA is completed to execute a CCA. This includes the five months needed to complete the SIA/CIA, and leaves the applicant and HONI six months to negotiate and execute the CCA. During the hearing, HONI's witness panel testified that in cases where only distribution upgrades are needed, six months from the delivery of the SIA/CIA will be sufficient to complete a CCA in those cases¹⁰ and this is reflected in HONI's final submissions.¹¹
- (b) In cases where both distribution and transmission upgrades are required to connect a project, HONI and the applicant should have a total of fourteen months to sign a CCA from the date the Distribution CIA is complete. This will allow five months for the completion of the SIA/CIA and an additional nine months for the negotiation and execution of the CCA. This proposal is

⁸ Notice of Amendment to a Code, Amendments to the Distribution System Code, EB-2009-088.

⁹ Hearing Transcript, p. 45, lines 10 to 18.

¹⁰ Hearing Transcript, p. 40, line 17 to p. 41, line 10, p. 43, line 26 to p. 44, line 6, p. 150, lines 9 to 24, and p. 152, lines 5 to 14.

consistent with the typical six to nine month timeframe to connect for a FIT contract that HONI developed and publicly presented in November 2009.¹² HONI has only dealt with one application since that time and conceded there is no basis to believe that this timeline has changed.¹³

20. It is OPA's preference that the Board extend the existing six-month timeline in section 6.2.4.1e(i) rather than introduce a new "provisional capacity allocation" concept into the DSC for the reasons noted above. In addition, it appears that HONI's proposal would allow applicants to hold a provisional capacity allocation for an indefinite period, which could unduly impede the efficient reallocation of that capacity to more viable projects.

21. In this regard, the OPA notes there was a two-month delay between the time Project 11,870 was allocated capacity (July 16, 2010) and the time the SIA/CIA application was made (September 14, 201).¹⁴ The other Projects identified by HONI received capacity allocations in July or August 2010, but SIA/CIA applications for these Projects had not been submitted as of October 6, 2010.¹⁵ The OPA invites HONI to comment in its Reply on the reason for this delay and suggest approaches to avoid such delays.

22. *The exemption does not provide for oversight of the connection process* – It is the OPA's submission that this application indicates a need for greater oversight of HONI's progress in connecting embedded generation facilities.

23. The OPA proposes that HONI be required to distribute the Board's Order in this proceeding to the affected generators and publicly file with the Board an updated and expanded version of the table of projects provided in the Response to Undertaking J1.1 on December 31, 2010 and monthly thereafter. A proposed version of the table is attached as Appendix "A". During cross-examination, HONI's witness panel stated that providing

¹¹ Submissions of the Applicant, Hydro One Networks Inc., p. 9.

¹² Exhibit No. K1.3: Excerpt of Webinar Document Put Together Jointly By the Ontario Power Authority and Hydro One November 20th, 2009; Hearing Transcript p. 156, line 16 to p. 157, line 22.

¹³ Hearing Transcript p. 157, line 23 to p. 158, line 5.

¹⁴ Response to Undertaking, J1.1.

¹⁵ Response to Undertaking, J1.1.

regular reports of this nature was reasonable and agreed that it would provide greater transparency to individual generators.¹⁶

B. Exemption from Section 6.2.4.18a

24. It is the OPA's position that an amendment to section 6.2.4.18a is not required as the issues identified in HONI's application are best addressed by an appropriately limited exemption to section 6.2.4.1e(i).

25. At the hearing¹⁷ and in its written submissions¹⁸, HONI clarified that its request for an exemption to section 6.2.4.18a is an alternative position to the granting of exemption to section 6.2.4.1e(i).

C. Exemption from Section 6.2.4.1c

26. HONI has not correctly described the effect of section 6.2.4.1c in its prefiled evidence¹⁹ or its written submissions²⁰. Section 6.2.4.1c simply says that a Distribution CIA "will not be completed" unless the facility has an in-service date of three years or less "at the time the application [for the Distribution CIA] is made". It does not invalidate the Distribution CIA if a CCA is not executed and does not require the removal of an applicant's capacity allocation as HONI suggests.

27. Each of the Projects has a FIT contract with a three year in-service date as required by section 6.2.4.1c and all have received a completed Distribution CIA.²¹ As such, there is no need for an exemption to this provision. Notably, it was the evidence of HONI's witness panel under cross-examination that the exemption was sought because HONI was being "ultra cautious".²²

28. Further, the suggestion in HONI's submissions that there is potential to renegotiate timelines in executed OPA contracts is irrelevant and ought not to form any part of the

¹⁶ Hearing Transcript, p. 86, line 17 to p. 88, line 12.

¹⁷ Hearing Transcript, p. 53, line 27 to p. 54, line 13.

¹⁸ Submissions of the Applicant, Hydro One Networks Inc., p. 12.

¹⁹ Exhibit C-1-1, p. 8.

²⁰ Submissions of the Applicant, Hydro One Networks Inc., p. 11.

²¹ Response to Undertaking J1.1.

²² Hearing Transcript, p. 55, lines 12 to 26.

Board's consideration of this matter. The timelines in executed OPA contracts are a matter of contract between the OPA and its suppliers, and those timelines are not open to regulatory review.

D. Exemption from Section 6.2.16

29. Section 6.2.16 relates to the process that precedes execution of a CCA. It provides that a distributor deliver a detailed cost estimate need by the later of 30 days after receipt of comments from the transmitter or distributor or 90 days following the receipt of payment from the applicant.

30. HONI has not led sufficient evidence to demonstrate why an exemption to section 6.2.16 is needed. The section provides the discipline needed to ensure the timely connection of renewable energy projects and compliance with it should not be excused lightly.

E. Exemptions for Other Distributors

31. The OPA is concerned that there could be projects connecting to distributors other than HONI that may also be at risk of losing their capacity allocation because a CCA cannot be completed within six months. For example, the evidence in the proceeding revealed that there is a project in the territory of Thunder Bay Hydro which may require a similar exemption.²³

32. To ensure these projects are treated fairly, the OPA requests that the Board consider a process that would provide for the application of any exemption granted by the Board to HONI be open to other distributors.

F. Exemption regarding Cost Responsibility Rules

33. The OPA takes no position regarding HONI's request for an exemption from the application date of the new cost responsibility rules.

²³ Ex. I-1-11, p. 3.

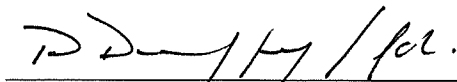
PART III - ORDERS SOUGHT

34. In the event the Board determines that an exemption should be granted to HONI, the OPA submits the exemption should be only to section 6.2.4.1e(i). The exemption should not incorporate the concept of "provisional capacity" and should be subject to the following conditions:

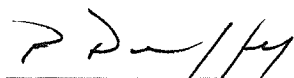
- (a) The exemption shall apply only to the twelve projects that HONI has listed in Exhibit I-1-10.
- (b) Where only distribution system upgrades are needed to connect a proposed embedded generation facility, a connection cost agreement shall be signed within eleven months of the date on which the applicant received a capacity allocation for the facility.
- (c) Where both transmission and distribution system upgrades are needed to connect a proposed embedded generation facility, a connection cost agreement shall be signed within fourteen months of the date on which the applicant received a capacity allocation for the facility.
- (d) HONI shall distribute the Board's Order in this proceeding to the affected generators and publicly file with the Board on December 31, 2010, and monthly thereafter, an updated and expanded version of the table of projects set out in Appendix "A".

35. In addition, the OPA requests that the Board consider a process that would provide for the application of any exemption granted by the Board to HONI be open to other distributors.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



 James W. Harbell



 Patrick G. Duffy

APPENDIX "A" - HONI PROJECT STATUS TABLE

[DATE]

Project ID Number	Project Size (MW)	Dx CIA		SIA		Tx CIA		Cost Estimate Delivered *	Draft CCA Delivered*	Deadline to Execute CCA
		Application Date	Completion Date	Application Date	Completion Date*	Application Date	Completion Date*			
11,690	10.8	5/10/2010	8/6/2010	NA		NA				
11,700	19.5	5/11/2010	8/11/2010	NA		NA				
11,720	23	5/11/2010	7/9/2010	NA		NA				
11,870	18	5/13/2010	7/16/2010	Sept 14, 2010		Sept 14, 2010				
12,270	20	5/21/2010	8/16/2010	NA		NA				
12,290	22.5	5/21/2010	8/20/2010	NA		NA				
12,430	18.4	5/26/2010	8/6/2010	NA		NA				
12,610	20	5/28/2010	8/20/2010	NA		NA				
12,750	11.5	5/31/2010	8/24/2010	NA		NA				
12,800	30	6/1/2010	8/6/2010	NA		NA				
12,810	10.25	6/1/2010	8/19/2010	NA		NA				
12,860	16.4	6/3/2010	8/6/2010	NA		NA				

* Where the step has not been completed, provide the estimated completion date.